**$2,655,000**
**THE CITY OF CHARLESTON, WEST VIRGINIA**
**PARKING SYSTEM REFUNDING REVENUE BONDS,**
**SERIES 2005 B**

**Date of Closing: April 1, 2005**

**Table of Contents**


| Document No. | Basic Documents |
|---|---|
| 1. | Certified copies from the Secretary of State of West Virginia of Chapter 8, Article 12, Chapter 8, Article 16 and Chapter 13, Article 2E of the Code of West Virginia, 1931, as amended |
| 2. | Bond Ordinance |
| 3. | Supplemental Resolution |
| 4. | Tax and Non-Arbitrage Certificate |
| 5. | Cross Receipt |
| 6. | Specimen Bond |
| | **Documents of Issuer** |
| 7. | Charter of The City of Charleston (the "Issuer") |
| 8. | Oaths of Office of Mayor, City Clerk and Council Members |
| 9. | Minutes of Council Meetings regarding all readings and public hearing of the Bond Ordinance and Adoption of Supplemental Resolution |
| 10. | Affidavit of Publication of the Notice of Public Hearing and Abstract of Bond Ordinance |
| 11. | Certificate of Determination |
| 12. | Request and Authorization to Authentication and Deliver the Bonds |
| 13. | DTC Blanket Letter of Representations |

14. IRS Form 8038-G and Letter of Transmittal

**Offering Documents**

15. Bond Purchase Agreement

16. Preliminary Official Statement

17. Official Statement

18. Continuing Disclosure Certificate

**Certificates**

19. General Certificate of Issuer

20. Certificate of Underwriters

21. Certificate of Registrar

**Opinions**

22. Opinion of Jackson Kelly PLLC, Bond Counsel

23. Supplemental Opinion of Jackson Kelly PLLC, Bond Counsel

24. Opinion of Steptoe & Johnson PLLC, Special Counsel to Issuer

25. Opinion of Goodwin & Goodwin, LLP, Underwriters' Counsel

**Documents Relating to the Refunding of Series 2005 Notes**

26. Notice of Mandatory Tender of Series 2005 Notes

27. Letter of Instructions to Registrar (Paying Agent) of Series 2005 Notes

28. Letter of Instructions to West Virginia Municipal Bond Commission

**Miscellaneous**

29. Registrar's Agreement

# State of West Virginia

# Certificate

*I, Betty Ireland, Secretary of State of the State of West Virginia, hereby certify that*

**THIS IS A TRUE COPY OF CHAPTER 8, ARTICLE 12 OF THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.**

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

March 29, 2005

*Secretary of State*

## § 8-11-5. Prejudgment alternative disposition of certain traffic offenses.

(a) Municipal courts are hereby authorized to establish a prejudgment alternative disposition procedure for traffic offenses over which the court has jurisdiction.

(b) Under a prejudgment disposition procedure authorized by subsection (a) of this section, if a person is found guilty of a traffic offense the municipal court may, with the person's consent, withhold for a reasonable time not to exceed ninety days the entry of a judgment of conviction so that the person may attend a driver safety education course designated by the municipal court. If the person attends said course, the municipal court, if satisfied with the person's participation in the course, shall, without entering a judgment of conviction, dismiss the proceeding against the person.

(c) It shall be a condition of any prejudgment alternative disposition authorized by the provisions of this section that the person pay any fine assessed by the court and pay all fees and costs required to be paid by any provision of this code where a person is convicted of a criminal traffic offense. No municipal court shall utilize any prejudgment alternative disposition procedure unless it collects such fees and costs as are required by any provision of this code and transmits the moneys collected as required by law. No municipal court shall utilize any prejudgment alternative disposition procedure unless it conforms with the requirements of this section.

(d) The procedure authorized by the provisions of this section shall not be available to any person arrested for driving under the influence of alcohol or drugs or any other offense for which a mandatory period of confinement in jail is required. (1994, c. 116.)

# ARTICLE 12.

# GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

### Part I. General Corporate Powers of Municipalities.

Sec.

8-12-1. General corporate powers of all municipalities.

### Part II. Home Rule Powers for Cities.

8-12-2. Home rule powers for all cities.
8-12-3. Creation by charter provision of certain independent city boards.
8-12-3a. Cities authorized to create department of development and transfer planning functions of certain independent agencies to such department; authorizing related ordinances and resolutions.
8-12-4. Power to provide by charter for initiative, referendum and recall.

### Part III. General Powers of Municipalities and Governing Bodies.

8-12-5. General powers of every municipality and the governing body thereof.
8-12-5a. Limitations upon municipalities' power to restrict the purchase, possession, transfer, ownership, carrying, transport, sale and

Sec.
storage of certain weapons and ammunition.
8-12-5b. Municipal authority to enact ordinance; ordinance provisions defining terms; restricting certain activities in relation to obscene matter; and establishing penalties for violations.
8-12-5c. Authority to enact ordinance restricting the location of businesses offering exotic entertainment.
8-12-5d. Regulation of amateur radio antennas.

**Part IV. Certain Specific Powers of Municipalities and Governing Bodies.**

8-12-6. Membership in association or league.
8-12-7. Power and authority to purchase insurance and to indemnify officers, agents and employees.
8-12-8. Group insurance programs authorized.
8-12-9. Power and authority to enact ordinance prohibiting discrimination with respect to housing accommodations.
8-12-10. Purchasing; competitive bidding.
8-12-11. Lease agreements for equipment or materials with option to cancel or renew for one year authorized.
Sec.
8-12-12. Power and authority to lease, establish, maintain and operate off-street parking facility.
8-12-13. Building regulation; general and special codes; state building code.
8-12-14. Permits for construction and alteration.
8-12-14a. [Repealed.]
8-12-15. Municipal inspection.
8-12-16. Ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings unfit for human habitation; procedures.

**Part V. Sale or Lease of Municipal Public Utility.**

8-12-17. Sale or lease of municipal public utility.

**Part VI. Sale, Lease or Disposition of Other Municipal Property.**

8-12-18. Sale, lease or disposition of other municipal property.

**Part VII. Extraterritorial Exercise of Powers and Authority.**

8-12-19. Extraterritorial exercise of powers and authority.

**Part VIII. Suits Against Municipalities.**

8-12-20. [Repealed.]

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**Revision of chapter.** — See note under the same catchline at the beginning of this chapter.

**Michie's Jurisprudence.** — For comprehensive treatment of the subject of the powers of a municipal corporation, see 13B M.J., Municipal Corporations §§ 25-51.

**ALR references.** — Power of city, town, or county or its officials to compromise claim, 15 ALR2d 1359.

**Common-law powers.** — Every town and village in this State, incorporated under the provisions of this chapter, or to which they apply, is a municipal corporation possessing all the powers incident to such corporations at common law, not changed, abolished, or prohibited by any statute. Richards v. Clarksburg, 30 W. Va. 491, 4 S.E. 774 (1887).

**Judicial notice of powers.** — The courts take judicial notice of the powers of mayors and councils under this chapter, and it is unnecessary in pleading to allege the existence of the same. Fisher v. City of Charleston, 17 W. Va. 595 (1881).

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PART I. GENERAL CORPORATE POWERS OF MUNICIPALITIES.

## § 8-12-1. General corporate powers of all municipalities.

Except as otherwise provided in this chapter, every municipality shall have plenary power and authority:

(1) To have and use a common seal;

(2) To contract and be contracted with;

(3) To institute, maintain and defend any civil action or other proceeding in any court;

(4) To take, purchase, hold and lease as lessee (on an annual fiscal year basis where tax revenues are to be used to make the rental payments required under any such lease, with or without an option to renew such lease each year for another such period), for any municipal purpose, real or personal property within or without the corporate limits of the municipality, and to acquire by condemnation real or personal property within or without the corporate limits of the municipality for the purposes set forth in and in accordance with the provisions of chapter fifty-four [§§ 54-1-1 et seq.] of this code, subject, however, to any limitations or qualifications set forth in this chapter eight; and

(5) To take by gift, donation, grant, bequest or devise and to hold and administer, real or personal property within or without the corporate limits of the municipality, absolutely, in trust or otherwise, for any public, charitable or municipal purpose, and to do all things necessary, useful, convenient or incidental to carry out the purpose of such gift, donation, grant, bequest, devise or trust, and to manage, sell, lease or otherwise dispose of the same in accordance with such terms and conditions as may be prescribed by the donor, grantor or testator and accepted by the municipality. (1937, c. 56; 1969, c. 86.)

**W. Va. Law Review.** — "Survey of Developments in West Virginia Law: 1984," 87 W. Va. L. Rev. 506 (1985).

**In general.** — Ordinarily a municipality acts only through its assembled council, whose will can be expressed only by a vote embodied in some distinct and definite form. City of Fairmont v. Hawkins, 172 W. Va. 240, 304 S.E.2d 824 (1983).

**Compliance with section.** — Where a specific statute or ordinance exists prescribing how official acts should be done, the statutory mandate may not be circumvented by permitting the public official to show that in the past the required statutory procedure has been ignored. City of Fairmont v. Hawkins, 172 W. Va. 240, 304 S.E.2d 824 (1983).

**Liability of public officer.** — Where the duties imposed upon a public officer are positive and ministerial only and involve no discretion on his part, he is liable to anyone injured by his nonperformance or his negligent performance thereof, and this without regard to his motive or any question involving corruption in office; and whether he has properly discharged his duties in the premises is generally a question of fact for the jury on the evidence adduced before them. City of Fairmont v. Hawkins, 172 W. Va. 240, 304 S.E.2d 824 (1983).

**Power to compromise claims.** — In the absence of some contrary provision, the power to compromise a claim is lodged with the legislative branch of the municipality and, therefore, a mayor is not empowered to compromise claims. City of Fairmont v. Hawkins, 172 W. Va. 240, 304 S.E.2d 824 (1983).

**Power to contract.** — A municipality is empowered to enter into collective bargaining agreements under its general power to contract and be contracted with, and through its power in § 8-12-2 to transact the city's business and incur obligations on behalf of the city. Local 598, Council 58 Am. Fed'n v. City of Huntington, 173 W. Va. 403, 317 S.E.2d 167 (1984).

Although there is no specific legislation which permits a city to contract with a humane society, the general powers of a municipality contained in this section which allow a municipality to contract or be contracted with, permitted a city to agree to appropriate funds to a humane society in return for the humane society keeping animals apprehended by city officials in the humane society animal shelter. Op. Att'y Gen., March 18, 1980, No. 55.

**Cited** in State ex rel. Charleston Bldg. Comm'n v. Dial, 198 W. Va. 185, 479 S.E.2d 695 (1996).

PART II. HOME RULE POWERS FOR CITIES.

## § 8-12-2. Home rule powers for all cities.

(a) In accordance with the provisions of the "Municipal Home Rule Amend-

ment" to the Constitution of this State, and in addition to the powers and authority granted by (i) such Constitution, (ii) other provisions of this chapter, (iii) other general law, and (iv) any existing charter, any city shall have plenary power and authority by charter provision not inconsistent or in conflict with such Constitution, other provisions of this chapter or other general law, or by ordinance not inconsistent or in conflict with such Constitution, other provisions of this chapter, other general law or any existing charter, to provide for the government, regulation and control of the city's municipal affairs, including, but not limited to, the following:

(1) The creation or discontinuance of departments of the city's government and the prescription, modification or repeal of their powers and duties;

(2) The transaction of the city's business;

(3) The incurring of the city's obligations;

(4) The presentation, ascertainment, disposition and discharge of claims against the city;

(5) The acquisition, care, management and use of the city's streets, avenues, roads, alleys, ways and property;

(6) The levy, assessment, collection and administration of such taxes and such special assessments for benefits conferred, as have been or may be specifically authorized by the legislature;

(7) The operation and maintenance of passenger transportation services and facilities, if authorized by the public service commission, and if so authorized, such transportation system may be operated without the corporate limits of such city, but may not be operated within the corporate limits of another municipality without the consent of the governing body thereof;

(8) The furnishing of all local public services;

(9) The government, protection, order, conduct, safety and health of persons or property therein;

(10) The adoption and enforcement of local police, sanitary and other similar regulations; and

(11) The imposition and enforcement of penalties for the violation of any of the provisions of its charter or of any of its ordinances.

(b) By charter provision, a civil service system may be provided for all or any class of city employees in addition to those classes for which a civil service system is made mandatory by general law.

(c) Any city is hereby authorized and empowered to require, for the purpose of inquiring into and investigating matters of concern to the city or its inhabitants, the attendance and testimony of witnesses and the production of evidence. In case of the failure or refusal of a witness to appear and testify or to produce evidence, the governing body may invoke the aid of the circuit court of the county in which the city or the major portion of the territory thereof is located. Upon proper showing, the circuit court shall issue an order requiring the witness to appear and give testimony and produce evidence concerning the matter in question. A person who fails or refuses to obey the order of the circuit court may be punished by the court as for contempt. A claim that any such testimony or evidence may tend to incriminate the person giving the testimony or evidence shall not excuse the witness, but such testimony or evidence shall not be used against the witness in any criminal prosecution.

(d) Any city is hereby authorized and empowered to provide for a sealer of weights and measures who shall exercise his powers in accordance with the provisions of article one [§§ 47-1-1 et seq.], chapter forty-seven of this code. (1937, c. 56; 1969, c. 86.)

**Cross references.** — Municipal Home Rule Amendment, W. Va. Const., art. VI, § 39(a).

**Compliance with section.** — Where a specific statute or ordinance exists prescribing how official acts should be done, the statutory mandate may not be circumvented by permitting the public official to show that in the past the required statutory procedure has been ignored. City of Fairmont v. Hawkins, 172 W. Va. 240, 304 S.E.2d 824 (1983).

**Delegation of subpoena power.** — A local government entity may, by a proper ordinance and in conformity with the State Administrative Procedures Act, §§ 29A-1 et seq., delegate to a local human relations commission, organized under § 5-11-12, the right to seek a subpoena from the appropriate circuit court under subsection (c) of this section. Huntington Human Relations Comm'n ex rel. James v. Realco, Inc., 175 W. Va. 24, 330 S.E.2d 682 (1985).

**Expression of municipal will.** — Ordinarily a municipality acts only through its assembled council, whose will can be expressed only by a vote embodied in some distinct and definite form. City of Fairmont v. Hawkins, 172 W. Va. 240, 304 S.E.2d 824 (1983).

**Liability of public official.** — Where the duties imposed upon a public officer are positive and ministerial only and involve no discretion on his part, he is liable to anyone injured by his nonperformance or his negligent performance thereof, and this without regard to his motive or any question involving corruption in office; and whether he has properly discharged his duties in the premises is generally a question of fact for the jury on the evidence adduced before them. City of Fairmont v. Hawkins, 172 W. Va. 240, 304 S.E.2d 824 (1983).

**Power to compromise claim.** — In the absence of some contrary provision, the power to compromise a claim is lodged with the legislative branch of the municipality and, therefore, a mayor is not empowered to compromise claims. City of Fairmont v. Hawkins, 172 W. Va. 240, 304 S.E.2d 824 (1983).

**Registration requirements.** — This section authorized a municipality to impose a registration requirement and to impose penalties for violation of such provision, but it is not authorized to impose a tax or fee to be paid for such registration. Op. Att'y Gen., Mar. 6, 1987, No. 10.

**Sanitation services.** — A municipality is empowered to enter into collective bargaining agreements for sanitation services through the power to transact the city's business and incur obligations on behalf of the city, and through the power to contract and be contracted with under § 8-12-1. Local 598, Council 58 Am. Fed'n v. City of Huntington, 173 W. Va. 403, 317 S.E.2d 167 (1984).

**Tax on public utilities.** — As to validity of municipal ordinance imposing a business and occupation tax upon public utilities operating within city, see 52 Op. Att'y Gen. 175 (1966).

**Quoted** in McCallister v. Nelson, 186 W. Va. 131, 411 S.E.2d 456 (1991).

**Cited** in Southwestern Community Action Council, Inc. v. City of Huntington Human Relations Comm'n, 179 W. Va. 573, 371 S.E.2d 70 (1988); State ex rel. State Line Sparkler of W. Va., Ltd. v. Teach, 187 W. Va. 271, 418 S.E.2d 585 (1992).

## § 8-12-3. Creation by charter provision of certain independent city boards.

In selecting or changing to a form of government based on any of the four plans set forth in section two [§ 8-3-2], article three of this chapter, a city may by charter provision withdraw from the governing body and administrative authority of the city the municipal powers and authority and duties pertaining to a city gas system, city electric system, any municipal public works in accordance with the provisions of article sixteen [§§ 8-16-1 et seq.] of this chapter, a city waterworks system in accordance with the provisions of article nineteen [§§ 8-19-1 et seq.] of this chapter, a city sewage treatment and disposal works, or a combined city waterworks and sewerage system in accordance with the provisions of article twenty [§§ 8-20-1 et seq.] of this chapter, or any combination of the foregoing, and confer such powers and

authority and duties upon one or more independent boards created by charter provision, whose members shall be elected by the qualified voters of the city, or appointed, in the manner provided by charter provision. Unless and until abolished by other charter provision, such board or boards so created shall have complete and exclusive jurisdiction of the exercise and discharge of the municipal powers and authority and duties so conferred upon it or them, independent of control by the governing body and administrative authority of the city. Such boards shall have the powers and authority and perform the duties conferred and required by general law.

The provisions of this section shall be construed as conferring additional powers and authority upon cities, and shall not be construed as affecting any powers and authority heretofore conferred upon any city by general, special or local law or by special legislative charter, or parts thereof; however, whenever a board is established by charter provision in accordance with the provisions of this section in connection with a municipal public works, a city waterworks system, or combined city waterworks and sewerage system, as aforesaid, such board shall act in lieu of the governing body of the city with respect thereto, and the provisions of said articles sixteen, nineteen and twenty of this chapter authorizing the establishment of a board with respect to any such public works, waterworks system or combined waterworks and sewerage system shall not be applicable. (1941, c. 69; 1969, c. 86.)

**Editor's notes.** — Section 8-3-2, referred to in the first sentence, now contains five plans.

## § 8-12-3a. Cities authorized to create department of development and transfer planning functions of certain independent agencies to such department; authorizing related ordinances and resolutions.

(a) In extension of the power and authority set forth in section two [§ 8-12-2] of this article and notwithstanding any provision of this code or any charter provision to the contrary, any city shall have plenary power and authority by charter provision or ordinance to establish a department of development for such city and to transfer to such department (1) all or any limited part of the planning functions of such city's housing authority, as provided for in article fifteen [§§ 16-15-1 et seq.], chapter sixteen of this code; (2) all or any limited part of the planning functions of such city's urban renewal authority, as provided for in article eighteen [§§ 16-18-1 et seq.], chapter sixteen of this code; (3) all or any limited part of the planning functions of such city's planning commission, as provided for in article twenty-four [§§ 8-24-1 et seq.] of this chapter; and (4) all or any limited part of the powers, privileges, rights, duties, responsibilities and obligations related to such planning functions.

(b) Any city adopting any such charter provision or ordinance shall also have plenary power and authority to enact such other ordinances and adopt such resolutions as may be deemed necessary or desirable to (1) implement and

make effective the provisions of subsection (a) of this section; and (2) provide for the implementation of the plans prepared by such city's department of development. (1973, c. 85.)

## § 8-12-4. Power to provide by charter for initiative, referendum and recall.

Any city may by charter provision provide for any or all of the following:

(1) The initiation of ordinances by petition bearing the signatures, written in their own handwriting, of not less than ten percent of the qualified voters of such city;

(2) The submission to the qualified voters of such city of a proposed ordinance at a regular municipal election or special municipal election upon petition bearing the signatures, written in their own handwriting, of not less than ten percent of the qualified voters of such city or upon resolution of the governing body of such city; and

(3) The holding of a special municipal election to submit to the qualified voters of such city the question of the recall of an elected officer upon petition bearing the signatures, written in their own handwriting, of not less than twenty percent of the qualified voters of such city. Not more than one recall election shall be held with respect to an officer during his term of office. (1937, c. 56; 1969, c. 86.)

**ALR references.** — Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor, 27 ALR2d 604.

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum, 33 ALR2d 1118.

Construction and application of constitutional or statutory provisions expressly exempting certain laws from referendum, 100 ALR2d 314.

**W. Va. Law Review.** — Lorensen, "Rethinking the West Virginia Municipal Code of 1969," 97 W. Va. L. Rev. 653 (1995).

**Applicability.** — The referendum powers granted under this section, which was enacted prior to the enactment of the Zoning Enabling Statute, do not apply to the adoption of an amendment to a zoning ordinance by the city council. State ex rel. Foster v. City of Morgantown, 189 W. Va. 433, 432 S.E.2d 195 (1993).

**Recall petition.** — The purpose of certifying a recall petition as sufficient is to require an election on the question of whether the officials subject to the petition should retain their office. State ex rel. Durkin v. Neely, 166 W. Va. 553, 276 S.E.2d 311 (1981).

PART III. GENERAL POWERS OF MUNICIPALITIES AND GOVERNING BODIES.

## § 8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by: (i) The constitution of this state; (ii) other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision; and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen [§§ 8-16-1 et seq.] of this chapter, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk or crosswalk, but before any permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time, place and purpose of the public hearing has been 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 the publication shall be the municipality: Provided, That any permit so granted shall automatically cease and terminate in the event of abandonment and nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to the municipality for its use and benefit;

(2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing or permitting to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails, tacks, wire, other litter or any offensive matter or anything likely to injure the feet of individuals or animals or the tires of vehicles;

(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality, including the naming or renaming thereof, and to consult with local postal authorities, the division of highways and the directors of county emergency communications centers to assure uniform, nonduplicative addressing on a permanent basis;

(5) To regulate the width of streets, avenues and roads, and, subject to the provisions of article eighteen [§§ 8-18-1 et seq.] of this chapter, to order the sidewalks, footways and crosswalks to be paved, repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants thereof or of the real property next adjacent thereto;

(6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and ferries and approaches thereto;

(7) To provide for the construction and maintenance of water drains, the drainage of swamps or marshlands and drainage systems;

(8) To provide for the construction, maintenance and covering over of watercourses;

(9) To control and administer the waterfront and waterways of the municipality and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;

(10) To prohibit the accumulation and require the disposal of garbage, refuse, debris, wastes, ashes, trash and other similar accumulations whether on private or public property: Provided, That, in the event the municipality annexes an area which has been receiving solid waste collection services from a certificated solid waste motor carrier, the municipality and the solid waste motor carrier may negotiate an agreement for continuation of the private solid waste motor carrier services for a period of time, not to exceed three years, during which time the certificated solid waste motor carrier may continue to provide exclusive solid waste collection services in the annexed territory;

(11) To construct, establish, acquire, equip, maintain and operate incinerator plants and equipment and all other facilities for the efficient removal and destruction of garbage, refuse, wastes, ashes, trash and other similar matters;

(12) To regulate or prohibit the purchase or sale of articles intended for human use or consumption which are unfit for use or consumption, or which may be contaminated or otherwise unsanitary;

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

(14) To regulate the keeping of gunpowder and other combustibles;

(15) To make regulations guarding against danger or damage by fire;

(16) To arrest, convict and punish any individual for carrying about his or her person any revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or any other dangerous or other deadly weapon of like kind or character;

(17) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any pornographic publications;

(18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill fame, or for knowingly permitting any house owned by him or her or under his or her control to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or frequenting same;

(19) To prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent;

(20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

(21) To arrest, convict and punish any individual for driving or operating a motor vehicle while intoxicated or under the influence of liquor, drugs or narcotics;

(22) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner

or concerned in interest, in keeping or exhibiting the table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(24) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to state licenses for any such business and the provisions of section four [§ 8-13-4], article thirteen of this chapter; and when the municipality, in the exercise of its discretion, refuses to grant a license to operate a pool or billiard room, mandamus may not lie to compel the municipality to grant the license unless it shall clearly appear that the refusal of the municipality to grant a license is discriminatory or arbitrary; and in the event that the municipality determines to license any business, the municipality has plenary power and authority and it shall be the duty of its governing body to make and enforce reasonable ordinances regulating the licensing and operation of the businesses;

(25) To protect places of divine worship and to preserve peace and order in and about the premises where held;

(26) To regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

(27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of necessary sustenance any domestic animal;

(28) To provide for the regular building of houses or other structures, for the making of division fences by the owners of adjacent premises and for the drainage of lots by proper drains and ditches;

(29) To provide for the protection and conservation of shade or ornamental trees, whether on public or private property, and for the removal of trees or limbs of trees in a dangerous condition;

(30) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas;

(31) To regulate the location and placing of signs, billboards, posters and similar advertising;

(32) To erect, establish, construct, acquire, improve, maintain and operate a gas system, a waterworks system, an electric system or sewer system and sewage treatment and disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of articles nineteen [§§ 8-19-1 et seq.] and twenty [§§ 8-20-1 et seq.] and of this chapter and particularly to the limitations or qualifications on the right of eminent domain set forth in articles nineteen and twenty), within or without the corporate limits of the municipality, except that the municipality may not erect any system partly without the corporate limits of the municipality to serve persons already obtaining service from an existing system of the character proposed and where the system is by

the municipality erected, or has heretofore been so erected, partly within and partly without the corporate limits of the municipality, the municipality has the right to lay and collect charges for service rendered to those served within and those served without the corporate limits of the municipality and to prevent injury to the system or the pollution of the water thereof and its maintenance in a healthful condition for public use within the corporate limits of the municipality;

(33) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to any system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all of the pertinent provisions of articles nineteen [§§ 8-19-1 et seq.] and twenty [§§ 8-20-1 et seq.] of this chapter;

(34) To establish, construct, acquire, maintain and operate and regulate markets and prescribe the time of holding the same;

(35) To regulate and provide for the weighing of articles sold or for sale;

(36) To establish, construct, acquire, maintain and operate public buildings, municipal buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor vehicle parking lots or any other public works;

(37) To establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use and in this connection also to proceed in accordance with the provisions of article two, chapter ten of this code;

(38) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;

(39) To provide for the appointment and financial support of a library board in accordance with the provisions of article one [§§ 10-1-1 et seq.] chapter ten of this code;

(40) To establish and maintain a public health unit in accordance with the provisions of section two, [§ 16-2-2] article two, chapter sixteen of this code, which unit shall exercise its powers and perform its duties subject to the supervision and control of the West Virginia board of health and state bureau for public health;

(41) To establish, construct, acquire, maintain and operate hospitals, sanitaria and dispensaries;

(42) To acquire, by purchase, condemnation or otherwise, land within or near the corporate limits of the municipality for providing and maintaining proper places for the burial of the dead and to maintain and operate the same and regulate interments therein upon terms and conditions as to price and otherwise as may be determined by the governing body and, in order to carry into effect the authority, the governing body may acquire any cemetery or cemeteries already established;

(43) To exercise general police jurisdiction over any territory without the corporate limits owned by the municipality or over which it has a right-of-way;

(44) To protect and promote the public morals, safety, health, welfare and good order;

(45) To adopt rules for the transaction of business and the government and regulation of its governing body;

(46) Except as otherwise provided, to require and take bonds from any officers, when considered necessary, payable to the municipality, in its corporate name, with such sureties and in a penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;

(47) To require and take from the employees and contractors such bonds in a penalty, with such sureties and with such conditions, as the governing body may see fit;

(48) To investigate and inquire into all matters of concern to the municipality or its inhabitants;

(49) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the municipality's inhabitants as the governing body may consider necessary or appropriate for the public interest;

(50) To create, maintain and operate a system for the enumeration, identification and registration, or either, of the inhabitants of the municipality and visitors thereto, or the classes thereof as may be considered advisable;

(51) To require owners, residents or occupants of factory-built homes situated in a factory-built rental home community with at least ten factory-built homes, to visibly post the specific numeric portion of the address of each factory-built home on the immediate premises of the factory-built home of sufficient size to be visible from the adjoining street: Provided, That in the event no numeric or other specific designation of an address exists for a factory-built home subject to the authorization granted by this subdivision, the municipality has the authority to provide a numeric or other specific designation of an address for the factory-built home and require that it be posted in accordance with the authority otherwise granted by this section.

(52) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

(53) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;

(54) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by the applicants in traveling to and from the municipality to be interviewed;

(55) To provide revenue for the municipality and appropriate the same to its expenses;

(56) To create and maintain an employee benefits fund which may not exceed one tenth of one percent of the annual payroll budget for general employee benefits and which is set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs and to expend moneys from the fund for these purposes;

(57) To enter into reciprocal agreements with governmental subdivisions or agencies of any state sharing a common border for the protection of people and property from fire and for emergency medical services and for the reciprocal use of equipment and personnel for these purposes; and

(58) To provide penalties for the offenses and violations of law mentioned in this section, subject to the provisions of section one [§§ 8-11-1], article eleven

of this chapter, and such penalties may not exceed any penalties provided in this chapter and chapter sixty-one [§§ 61-1-1 et seq.] of this code for like offenses and violations. (Code 1868, c. 47, § 28; 1882, c. 92, § 28; 1891, c. 92, § 28; 1905, c. 53, § 28; 1921, c. 143, § 28; Code 1923, c. 47, § 28; 1935, c. 66; 1941, cc. 65, 66; 1947, c. 117; 1969, c. 86; 1972, c. 77; 1981, c. 162; 1983, c. 49; 1989, c. 41; 1999, c. 201; 2001, c. 211; 2002, c. 63.)

I. General Consideration.
II. Powers of Municipality as to Streets and Highways.
A. In General.
B. Building Sidewalks.
III. Liability of Municipality to Streets.
IV. Abatement of Nuisances.
V. Miscellaneous Powers.
A. Pool and Billiard Rooms.
B. Building Permits and Restrictions.
C. Other Powers.

## I. GENERAL CONSIDERATION.

**Cross references.** — Home rule for municipalities, W. Va. Const., art. VI, § 39(a).

Municipal courts, W. Va. Const., art. VIII, § 11.

Emergency Ambulance Service Act of 1975, §§ 7-15-1 to 7-15-18.

Municipal authority to contract for extinguishing fire within three miles of corporate limits, § 8-15-3.

**Effect of amendment of 2002.** — Acts 2002, c. 63, effective May 12, 2002, in (24), substituted "refuses" for "shall have refused" following "discretion"; in (27) inserted "or" preceding "overloading"; in (40), substituted "bureau for public health" for "department of health"; in (46), substituted "considered" for "deemed"; in (49), substituted "may consider" for "may deem"; in (50), substituted "considered advisable" for "deemed advisable"; inserted (51) and redesignated the remaining subdivisions accordingly; and made minor stylistic changes.

**Michie's Jurisprudence.** — As to the purposes for which property may be taken by eminent domain, see 7A M.J., Eminent Domain.

For a comprehensive treatment of the powers of a municipal corporation, see 13B M.J., Municipal Corporations §§ 25-51.

As to municipal contracts, see 13B M.J., Municipal Corporations §§ 93-101.

For a comprehensive treatment of the subject of streets and highways, see 17 M.J., Streets and Highways.

As to the liability of a city for defective streets in general, see 17 M.J., Streets and Highways § 84.

As to damages and compensation due on the establishment of streets, see 17 M.J., Streets and Highways § 63.

**ALR references.** — Municipal establishment or operation of off-street public parking facilities, 8 ALR2d 373.

Power of municipality or other governmental unit to make contract or covenant exempting or releasing property from special assessment, 47 ALR2d 1185.

Power of municipality as to billboards and outdoor advertising, 58 ALR2d 1314.

Power of municipal corporation to exchange its real property, 60 ALR2d 220.

Municipality's power to permit private owner to construct building or structure overhanging or crossing the airspace above public street or sidewalk, 76 ALR2d 896.

Regulation and licensing of private garbage or rubbish removal services, 83 ALR2d 799.

Power of municipal corporation to submit to arbitration, 20 ALR3d 569.

Carwash as nuisance, 4 ALR4th 1308.

Validity of zoning or building regulations restricting mobile homes or trailers to established mobile home or trailer parks, 17 ALR4th 106.

Implied acceptance, by public use, of dedication of beach or shoreline adjoining public waters, 24 ALR4th 294.

State and local government liability for injury or death of bicyclist due to defect or obstruction in public bicycle path, 68 ALR4th 204.

**W. Va. Law Review.** — For note discussing the regulation of mobile homes through zoning, see 75 W. Va. L. Rev. 382 (1973).

Wakefield, Problems Associated With the Management of Solid Wastes: Is There a Solution in the Offing? 83 W. Va. L. Rev. 131 (1980).

Lewin, "The Silent Revolution in West Virginia's Law of Nuisance," 92 W. Va. L. Rev. 235 (1990).

**In general.** — A municipal corporation possesses and can exercise the following powers, and no others: (1) Those granted in express word by general statutes or charters; (2) those

necessarily or fairly implied in or incident to the powers expressly so granted; (3) those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. State ex rel. Sheldon v. City of Wheeling, 146 W. Va. 691, 122 S.E.2d 427 (1961), commented on in 64 W. Va. L. Rev. 444 (1962); Maxey v. City of Bluefield, 151 W. Va. 302, 151 S.E.2d 689 (1966).

Where a fair, substantial, reasonable doubt exists as to whether a municipal corporation is possessed of a power, the power must be denied. Hyre v. Brown, 102 W. Va. 505, 135 S.E. 656, 49 ALR 1230 (1926); State ex rel. Sheldon v. City of Wheeling, 146 W. Va. 691, 122 S.E.2d 427 (1961), commented on in 64 W. Va. L. Rev. 444 (1962); Maxey v. City of Bluefield, 151 W. Va. 302, 151 S.E.2d 689 (1966).

**Construction with § 8-20-1.** — Considering the general grant of authority provided by subdivision (32) of this section there is no language in article 20 that would prevent a municipality from granting funds to its combined waterworks and sewerage system to be used for plant expansion or repair. What § 8-20-1 does say, however, is that if the municipality wishes to finance any of the activities governed by the article, it must do so by revenue bonds or by loans or advances under § 8-20-16. Op. Att'y Gen., April 3, 1979.

**Contracts.** — If the municipality has power to contract by express contract, and the contract is not against public policy, and there are no statutory or charter provisions limiting the mode of execution of a like express contract, it will be liable on an implied contract where, with the knowledge and consent, express or implied, of the members of the council, it has received benefits rendered at the instance and request of its duly authorized agents acting for and on its behalf, either in the absence of any contract or where the express contract is invalid because of mere irregularities. Cade v. City of Belington, 82 W. Va. 613, 96 S.E. 1053 (1918).

As a general rule, a municipal corporation is not bound by a contract made without corporate action by the council, duly assembled, manifested by an order entered of record in the minute book containing a notation of its proceedings. Cade v. City of Belington, 82 W. Va. 613, 96 S.E. 1053 (1918).

Informal discussion of a proposition at an informal meeting of the members of a municipal council, but on which no formal action is taken and no minutes made, though there is a general understanding as to what should be done, does not constitute municipal action binding the municipality. Atlantic Bitulithic Co. v. Town of Edgewood, 76 W. Va. 630, 87 S.E. 183 (1915).

**Exercise of powers.** — This section does not confer power to punish acts made criminal by state law and fully covered thereby, except such as would be attended with circumstances of aggravation not included in the state law; such power must be specifically and expressly given by the legislature before it can be exercised by such corporation. Judy v. Lashley, 50 W. Va. 628, 41 S.E. 197, 57 L.R.A. 413 (1902).

Where this section confers power upon a municipal corporation to be exercised for the public good, the exercise of the power is not merely discretionary, but imperative. Cavender v. City of Charleston, 62 W. Va. 654, 59 S.E. 732 (1907).

As to power of council to direct disbursement of funds, see Town of Cameron v. Hicks, 65 W. Va. 484, 64 S.E. 832 (1909).

A municipality acts only through its assembled council, whose will can be expressed only by a vote embodied in some distinct and definite form. Ray v. City of Huntington, 81 W. Va. 607, 95 S.E. 23, 1918D L.R.A. 931 (1918).

As to power of council to consider matter of rent control, see Gates v. Council of City of Huntington, 93 F. Supp. 757 (S.D.W. Va. 1950).

**Jurors.** — Municipalities have the power to summon and compensate jurors, such power being necessarily and fairly implied as an incident to the express powers they have been granted by this section to arrest, convict, and punish criminal conduct violating municipal ordinances. Scott v. McGhee, 174 W. Va. 296, 324 S.E.2d 710 (1984).

**Applied** in Rogers v. City of South Charleston, 163 W. Va. 285, 256 S.E.2d 557 (1979); Berkeley County Comm'n v. Shiley, 170 W. Va. 684, 295 S.E.2d 924 (1982); Sale v. Goldman, 208 W. Va. 186, 539 S.E.2d 446 (W. Va. 2000).

**Cited** in State v. Vandall, 170 W. Va. 374, 294 S.E.2d 177 (1982); Hubby v. Carpenter, 177 W. Va. 78, 350 S.E.2d 706 (1986); City of Bluefield v. Taylor, 179 W. Va. 6, 365 S.E.2d 51 (1987); State v. Hefner, 180 W. Va. 441, 376 S.E.2d 647 (1988); State ex rel. State Line Sparkler of W. Va., Ltd. v. Teach, 187 W. Va. 271, 418 S.E.2d 585 (1992); State ex rel. Council of Charleston v. Hall, 190 W. Va. 665, 441 S.E.2d 386 (1994).

## II. POWERS OF MUNICIPALITY AS TO STREETS AND HIGHWAYS.

### A. In General.

**Authority to conduct survey.** — General municipal law municipalities have, pursuant to this section, the authority to lay off and open or to alter existing streets, and in order to properly do so, may conduct a survey. 51 Op. Att'y Gen. 408 (1965).

**Bridges.** — A public bridge over a stream connecting streets of a city is a part of such streets. Cavender v. City of Charleston, 62 W. Va. 654, 59 S.E. 732 (1907).

Where by the extension of the corporate limits of a city a public bridge, owned and con-

trolled by a county, comes to be within such city, it becomes the duty of the city under this section to keep the bridge in repair. Cavender v. City of Charleston, 62 W. Va. 654, 59 S.E. 732 (1907).

**Construction with other law.** — The provisions of this section granting cities power to regulate the use of streets, and § 8-31-1, authorizing cities to grant franchises, and the provisions of §§ 24-1-1 to 24-4-8, creating the public service commission and defining its powers and duties, though pari materia, are not in irreconcilable conflict. Chesapeake & Potomac Tel. Co. v. City of Morgantown, 144 W. Va. 149, 107 S.E.2d 489 (1959).

**Injunctive relief.** — To entitle a property owner to injunctive relief against the vacation or obstruction of a public street or road by public authority, his property must abut on that part of the road so vacated or obstructed, or he must show that he will thereby suffer special or peculiar damage or inconvenience, not common to all. Davis Colliery Co. v. Town of Harding, 83 W. Va. 609, 98 S.E. 815 (1919).

**Americans with Disabilities Act claim.** — For purposes of a claim under the Americans with Disabilities Act, this statute gives a city authority over sidewalks, as well as streets and roads, notwithstanding a city ordinance that imposes a duty on property owners, their agents and occupants of property to keep any sidewalk abutting the property in good order. Simpson v. City of Charleston, 22 F. Supp. 2d 550 (S.D.W. Va. 1998).

**Lights.** — The grant by a city to a gas company of the exclusive privilege of lighting the city with gas, pursuant to the power given in this section, does not deprive the city of the power to contract with an electric light company for lighting the city with electric lights. Parkersburg Gas Co. v. City of Parkersburg, 30 W. Va. 435, 4 S.E. 650 (1887).

This section enables a city to light its streets, but does not require it to do so. Slaughter v. City of Huntington, 64 W. Va. 237, 61 S.E. 155, 16 L.R.A. (n.s.) 459 (1908).

**Parking meters.** — Municipal authorities cannot be required to abandon parking meters on city streets abutted by property owned by the county. 45 Op. Att'y Gen. 690 (1954).

A city council has not exceeded its authority in the installation of parking meters on county property, assuming, of course, that the installation of such meters is a regulatory rather than a revenue measure. 46 Op. Att'y Gen. 318 (1955).

**Paving.** — Under this section the council has a right to pave any and all streets within the corporation. Dancer v. Town of Mannington, 50 W. Va. 322, 40 S.E. 475 (1901).

A municipality cannot legally assess a part of the cost of paving a street wholly within the municipality against abutting property which, although bordering thereon, lies wholly without the corporate limits of the municipality. 51 Op. Att'y Gen. 13 (1964).

As to processes by which a city council may obtain authority to pay for the paving or repaving of its municipal streets through use of general revenue funds without requiring the abutting property owner to be assessed for such improvements, see 52 Op. Att'y Gen. 326 (1967).

**Police power.** — The action of municipal authorities in granting and revoking privileges and licenses in highways, is the exercise of delegated police power, and is not judicial in character. Wheeling & E.G. R.R. Co. v. Town of Triadelphia, 58 W. Va. 487, 52 S.E. 499, 4 L.R.A. (n.s.) 321 (1905).

The public service commission does not have "jurisdiction" to usurp or interfere with the police power of a municipality in the control of its streets. Chesapeake & Potomac Tel. Co. v. City of Morgantown, 144 W. Va. 149, 107 S.E.2d 489 (1959).

**Railroads.** — The surrender of a street to a railroad company, upon conditions prescribed by the statute, is not a devotion thereof to private use. County Court v. City of Grafton, 77 W. Va. 84, 86 S.E. 924 (1915); Yates v. West Grafton, 34 W. Va. 783, 12 S.E. 1075 (1891).

An ordinance, pursuant to this section, passed by the council of a town, granting to a street railway company the right to lay its track and operate its railway in the streets of the town, and accepted by the railway company, constitutes a contract between the town and such company, vesting title to such right or easement in it, unless the ordinance contains conditions precedent, compliance with which is requisite to the vesting of title. Wheeling & E.G. R.R. Co. v. Town of Triadelphia, 58 W. Va. 487, 52 S.E. 499, 4 L.R.A. (n.s.) 321 (1905).

A council has statutory power, as against the county court (now county commission), to allow a street to be so occupied and used by a railroad as to preclude travel over it, in consideration of the building by the railroad company of an equally good or better means of access to the city, connecting it with a county road at another point, not unreasonably distant, although a limited number of people may suffer inconvenience by the alteration. County Court v. City of Grafton, 77 W. Va. 84, 86 S.E. 924 (1915).

**Renting portions of streets.** — If a city has rented designated portions of the public streets to individuals, in order to obtain revenue for the city, then such rental is unauthorized and unlawful. However, if the rental is employed by the city as a manner of regulating on-street parking and the flow of traffic on its municipal streets, then the city is authorized to make such rentals. 46 Op. Att'y Gen. 446 (1956).

**Scope of authority.** — The authority of a municipality in regulating the use of its streets

is not unlimited. Chesapeake & Potomac Tel. Co. v. City of Morgantown, 144 W. Va. 149, 107 S.E.2d 489 (1959).

**Taking private property.** — A municipality's mere designation of a certain area as a public street does not thereby automatically cause such designated area to become a public street. Private property cannot be taken for public purpose without just compensation to the owner thereof. If municipalities, in laying off new streets or altering old streets, take or encroach upon private property, such municipalities must be certain that the private owner's rights have been divested in one of the following four basic methods in which private property becomes a public way: (a) grant; (b) condemnation; (c) continuous adverse use by public, with official recognition by public authorities; (d) owner dedication and acceptance of same by public authority. 51 Op. Att'y Gen. 408 (1965).

**Traffic control.** — The power vested in a city council by this section to have its streets kept free from obstructions and to protect the persons and property of its inhabitants, confers authority to pass a traffic ordinance requiring vehicles of all kinds, in the use of the streets of the city, to confine themselves to the right-hand side of the centers thereof, with reference to the directions in which they are severally moving, and forbidding the leaving of any vehicle standing on a street elsewhere than on the right-hand side thereof with reference to the direction in which it fronts. Beck v. Cox, 77 W. Va. 442, 87 S.E. 492 (1915).

City may exercise reasonable discretion in limiting number of stops of buses for purpose of taking on and letting off passengers. Eastern Ohio Transp. Corp. v. City of Wheeling, 115 W. Va. 293, 175 S.E. 219, cert. denied, 293 U.S. 616, 55 S. Ct. 148, 79 L. Ed. 705 (1934).

All state employees must obey municipal traffic regulations and pay parking meter fees and fines, except where speed and right-of-way are a necessity or emergency circumstances exist. 49 Op. Att'y Gen. 202 (1961).

**Utilities.** — A municipal ordinance making it unlawful to dig in the streets for the purpose of laying gas pipes, "without the consent of the council of the town entered upon the record of said town," is void, for the reason that it vests the council with arbitrary power to discriminate between citizens who may wish to obtain the privilege. Lynch v. Town of North View, 73 W. Va. 609, 81 S.E. 833, 52 L.R.A. (n.s.) 1038 (1914).

Where a municipality has permitted a company, without a franchise, to expend a considerable sum in supplying its inhabitants with gas, the municipality may be estopped to prevent the company from maintaining its pipeline system in the city streets as established. Marmet Gas Co. v. Town of Marmet, 102 W. Va. 605, 135 S.E. 839 (1926).

**Vacating a street.** — A town council may vacate a street in whole or in part for the public welfare, but not so that the ground may go to private use. Pence v. Bryant, 54 W. Va. 263, 46 S.E. 275 (1903).

Whether the motives of a town council in vacating a street are proper cannot be judicially inquired into; but the aim and purpose of the vacation, and the end accomplished, may be considered in passing on its validity. If the purpose effected by it is within the power of the council, its act will be valid; otherwise not. Pence v. Bryant, 54 W. Va. 263, 46 S.E. 275 (1903).

**Width of street.** — An ordinance of a town council reducing the width of a street from forty to fifteen feet simply, not specifying what part of the street is to remain such, is void for uncertainty. Pence v. Bryant, 54 W. Va. 263, 46 S.E. 275 (1903).

### B. Building Sidewalks.

**Cross reference.** — See § 8-18-1 and notes thereto.

**Construction.** — Any ordinance enacted pursuant to the provisions of subdivision (5) of this section is in derogation of the common law, and therefore must be strictly construed. Crago v. Lurie, 166 W. Va. 113, 273 S.E.2d 344 (1980).

**Duty to maintain.** — The mere fact that the sidewalk complained of is within the corporate limits of the defendant town is not sufficient to charge the town with the duty of keeping it in good repair and safe condition; to charge the defendant with that duty, it must be proved that it is within the limits or lines of the public street or road in the town, made so by the council of the town, or that the authorities of the town have exercised control over it before the happening of the injury to the plaintiff. Chapman v. Milton, 31 W. Va. 384, 7 S.E. 22 (1888).

The authority conferred by this section and § 8-18-1 requires the property owner to build and maintain a suitable sidewalk, but does not confer authority upon the city to require the property owner to remove embankments, or to fill in depressions to bring the grade of the sidewalk to the established grade of a street; and a town cannot charge the owner of real estate with expenses for such grading, excavating, or stonework done in preparing a sidewalk for pavement or curb. Fry v. City of Ronceverte, 93 W. Va. 388, 117 S.E. 140 (1923); Town of Gassaway v. Klein, 77 W. Va. 461, 87 S.E. 853 (1916).

An ordinance which specifically provided only that the owner of property has responsibility for keeping an abutting sidewalk in repair but which made no reference whatsoever to the occupant or lessee of the building, taken

as strictly construed, imposed a duty upon an abutting property owner but not an abutting property occupant or lessee to maintain the adjoining sidewalk in good repair. Crago v. Lurie, 166 W. Va. 113, 273 S.E.2d 344 (1980).

**Opportunity to repair.** — Before an assessment for building sidewalks can be binding on a lot owner or become a lien on his property, he must have had an opportunity to do the work which he could be required to do, and have refused or failed to do so. Town of Gassaway v. Klein, 77 W. Va. 461, 87 S.E. 853 (1916).

**Property cost of repair.** — In the absence of a statute or charter provision expressly, or by necessary implication, authorizing a municipality to require an abutting property owner to reimburse the municipality for all loss, damage, cost or expenses that may be imposed upon it by reason of the failure of the property owner to maintain the sidewalk adjacent to his property in good repair, the municipality is without power to do so and an ordinance purporting to so require is, to that extent, invalid. Maxey v. City of Bluefield, 151 W. Va. 302, 151 S.E.2d 689 (1966).

## III. LIABILITY OF MUNICIPALITY TO STREETS.

**Cooperative maintenance.** — A municipal corporation, under its statutory power to lay off, open, vacate and improve streets, may impliedly and incidentally withdraw from cooperative maintenance with a county court (now county commission), of a highway leading into the city from the country, by vacation or discontinuance of a street constituting part of such highway. County Court v. City of Grafton, 77 W. Va. 84, 86 S.E. 924 (1915).

**Dedicated streets.** — When land has been dedicated for a public street, and it has been accepted by long use by the general public as a street, so that retraction would be hurtful to the public, the dedication cannot be retracted, though no municipal order or action has accepted the dedication, and it is a valid street as between the dedicator and his alienees and the public; but without such corporate acceptance the town would not be chargeable with the street. Pence v. Bryant, 54 W. Va. 263, 46 S.E. 275 (1903).

For full treatment of dedication, see 5C M.J., Dedication.

**Owner's knowledge.** — Though the owner of a lot abutting on a street with a natural surface grade line may ordinarily be entitled to damages for an injury to the lot occasioned by an alteration of the grade, he cannot recover for improvements thereon made with knowledge of the necessity for such alteration. Ray v. City of Huntington, 81 W. Va. 607, 95 S.E. 23, 1918D L.R.A. 931 (1918).

**Petitions.** — Joining in a petition requesting the city council to pave a public street does not operate as a waiver of the right to prosecute an action for injury done to abutting property. Ray v. City of Huntington, 81 W. Va. 607, 95 S.E. 23, 1918D L.R.A. 931 (1918).

**Pleadings.** — Plaintiff bringing suit against city for failure to repair streets need not allege or prove city's knowledge of defect. Chapman v. Milton, 31 W. Va. 384, 7 S.E. 22 (1888).

Where the duty to keep its streets in repair is imposed upon a municipality by this section, of which the court is bound to take judicial notice, no averment in the declaration as to such obligation is necessary. Hysell v. Central City, 64 W. Va. 133, 61 S.E. 43 (1908).

**Recovery of costs.** — This section does not give the authority to any resident of the city to repair streets and then recover the cost of such repair from the city government, even though he feels that the portion of the streets thereof necessary to his business are not being properly maintained. City of Benwood v. Interstate Bridge Co., 30 F. Supp. 952 (D. W. Va. 1940).

**Representations.** — The representations of an unauthorized agent as to street grades not formally or definitely established does not bind the municipality. Ray v. City of Huntington, 81 W. Va. 607, 95 S.E. 23, 1918D L.R.A. 931 (1918).

## IV. ABATEMENT OF NUISANCES.

**Michie's Jurisprudence.** — 14A M.J., Nuisances.

**In general.** — Under this section, the council may abate as a nuisance only that which is recognized as such per se, or branded as such by a lawful statute or ordinance. Donohoe v. Fredlock, 72 W. Va. 712, 79 S.E. 736 (1913); Parker v. City of Fairmont, 72 W. Va. 688, 79 S.E. 660 (1913); Sharon Steel Corp. v. City of Fairmont, 175 W. Va. 479, 334 S.E.2d 616 (1985), appeal dismissed, 474 U.S. 1098, 106 S. Ct. 875, 88 L. Ed. 2d 912 (1986).

**Due process required.** — A municipal corporation cannot by its mere declaration that a dwelling house is a nuisance subject it to removal, but it must first resort to some proper judicial proceeding, giving the owner or occupant an opportunity to be heard before his house is condemned and removed as a nuisance. Teass v. City of St. Albans, 38 W. Va. 1, 17 S.E. 400, 19 L.R.A. 802 (1893), overruled on other grounds, Ralston v. Weston, 46 W. Va. 544 33 S.E. 326 (1899), overruled on other grounds, Weston v Ralston, 48 W. Va. 170, 36 S.E. 446 (1900; Yates v. Milwaukee, 77 U.S. (10 Wall.) 497, 19 L. Ed. 984 (1870).

**Hazardous waste.** — A municipality has the authority to declare the improper permanent disposal of hazardous wastes a public nuisance under subdivision (23) of this section, which empowers municipalities to provide for the elimination of hazards to public health and

safety, where the term "hazardous waste" in the ordinance is defined, in part, as material which poses a substantial present or potential hazard to human health or the environment. Sharon Steel Corp. v. City of Fairmont, 175 W. Va. 479, 334 S.E.2d 616 (1985), appeal dismissed, 474 U.S. 1098, 106 S. Ct. 875, 88 L. Ed. 2d 912 (1986).

**Ordinance required.** — The production and emission of smoke from a plant of a lawful business cannot be abated by a city under its mere charter powers to abate nuisances and to prevent injury and annoyance, in the absence of a reasonable ordinance, applicable alike to all of a class, making such production and emission unlawful. Parker v. City of Fairmont, 72 W. Va. 688, 79 S.E. 660 (1913).

**Summons.** — Under this section, giving the council of a town power to abate a nuisance, but not prescribing the methods of procedure, upon a petition signed by fifty residents, supported by two affidavits fully describing the alleged nuisance, a merry-go-round, and praying that the owner might be summoned before the town council, a summons signed by the mayor only, in the nature of an order to show cause, and reciting the facts set out in the petition, is sufficient. Town of Davis v. Davis, 40 W. Va. 464, 21 S.E. 906 (1895).

## V. MISCELLANEOUS POWERS.

### A. Pool and Billiard Rooms.

**Licenses — In general.** — As to the power of municipality to grant or refuse licenses, see 12A M.J., Licenses §§ 10-12.

**Licenses — Grounds for refusal.** — The governing body of an incorporated town may, as an exercise of reasonable discretion, refuse poolroom license to an applicant who is delinquent in the payment of taxes to the municipality and has been convicted upon his own confession of assault and battery. Flanagan v. Town of Petersburg, 108 W. Va. 111, 150 S.E. 382 (1929).

**Licenses — Refusal.** — The discretionary refusal of a license for a poolroom by a city council will not be reviewed by mandamus or otherwise. State ex rel. Hamrick v. Pocahontas County Court, 92 W. Va. 222, 114 S.E. 519 (1922).

The governing body of a city, town or village may, under this section, maintain a policy of rejecting all applications for poolroom licenses. State ex rel. Baylor v. City of Hinton, 109 W. Va. 653, 155 S.E. 912 (1930).

**Poolroom not nuisance per se.** — If a licensed poolroom degenerates into a nuisance in its operation and conduct, it may be abated by the council; but such rooms are not nuisances per se. State ex rel. Hoffman v. Town of Clendenin, 92 W. Va. 618, 115 S.E. 583, 29 ALR 37 (1922).

### B. Building Permits and Restrictions.

**Cross reference.** — As to building codes, see § 8-12-13.

**Michie's Jurisprudence.** — For full treatment of building restrictions and ordinances, see 3A M.J., Building Restrictions.

**Building permit.** — Where a municipal ordinance requires the owner of land to obtain a permit from the city council before he can lawfully erect a building thereon, and the landowner has fully complied with all the requirements of the ordinance and the rules and regulations of the city in respect thereto, the city council cannot arbitrarily refuse such permit, and mandamus will issue to compel the city council to grant such building permit, where its return to the alternative writ discloses no valid reason for its refusal. State ex rel. Nunley v. Mayor of Montgomery, 94 W. Va. 189, 117 S.E. 888 (1923).

**Construction materials.** — Under this section the provisions of a municipal ordinance prohibiting the building of garages within a city unless they be of fireproof construction, and prescribing penalties for the violation of such ordinance, constitute a valid exercise of the police power of the municipality. Harris v. Poulton, 99 W. Va. 20, 127 S.E. 647, 40 ALR 334 (1925).

**Hazardous materials.** — An ordinance prohibiting, within city territory immediately bordering the state capitol grounds and closely built up with valuable residences, the storage of gasoline, naphtha, kerosene, gunpowder, dynamite and like explosive materials should be upheld as a reasonable exercise of the police power of the municipality. State ex rel. Oil Serv. Co. v. Stark, 96 W. Va. 176, 122 S.E. 533 (1924).

**Minor alterations.** — Where a city council passes an ordinance requiring permission to be obtained from such city council before a property owner can "alter, change or repair" a building already erected, and under such ordinance refuses permission to the owner of a house to make such minor alterations, changes and repairs, as the replacing of windows and doors, the removing and relocation of partition walls on the inside of the house, the repapering of the walls and the painting of the outside walls, such refusal is unwarranted and unreasonable. Harvey v. City of Elkins, 65 W. Va. 305, 64 S.E. 247 (1909).

**Ordinance required.** — A city council has no authority to regulate the building of garages and restrict the locality in which they are permitted to be built, otherwise than by an ordinance of the city fully prescribing regulations of the same, and definitely setting forth the restricted area. State ex rel. Nunley v. Mayor of Montgomery, 94 W. Va. 189, 117 S.E. 888 (1923).

### C. Other Powers.

**Cross reference.** — As to powers of a police officer, see § 8-14-3, and notes thereto.

**Ambulance services.** — County courts (county commissions) and municipalities may contract with nonprofit corporations to furnish residents with emergency ambulance services. 52 Op. Att'y Gen. 48 (1966).

**Animals.** — Ordinance may authorize sale of animals astray during night on public streets. Ordinances ordained by a city council in pursuance of the provisions of this section may as an act of police regulation and power provide for the taking up and impounding of cattle, hogs, horses, sheep, and other animals found running at large in the public streets during the night, and for selling them to pay charges for impounding, etc., without judicial inquiry or determination, upon notice being given to the owner; and such provisions will not be unconstitutional, as authorizing the forfeiture or confiscation of property without due process of law or without compensation. Burdett v. Allen, 35 W. Va. 347, 13 S.E. 1012, 14 L.R.A. 337 (1891).

Dog ordinance is valid only insofar as it prohibits dogs from running at large in public places and the penalty is limited to actual violations rather than violations of the "spirit" of the ordinance. 51 Op. Att'y Gen. 144 (1964).

**Cemeteries.** — Ground conveyed to an incorporated town to be used as a graveyard, under this section, and dedicated by the town to the public use as such, and so used by the public, is held in trust by the town for the public for the burial of the dead. Ritter v. Couch, 71 W. Va. 221, 76 S.E. 428, 42 L.R.A. (n.s.) 1216 (1912).

**Employee retirement fund.** — The language of this section does not grant expressly to municipalities the power to establish a retirement and benefit fund for municipal employees, and it does not even suggest, much less imply, the grant of such power. State ex rel. Tucker v. City of Wheeling, 128 W. Va. 47, 35 S.E.2d 681 (1945). See now §§ 8-22-2 to 8-22-15, authorizing Class I and Class II cities to establish and maintain employees' retirement and benefit funds.

**Fire protection.** — A municipal corporation may issue franchise for furnishing water for fire protection. Mountain State Water Co. v. Town of Kingwood, 121 W. Va. 66, 1 S.E.2d 395 (1939), it was held that the council and officers of town had the statutory power to issue a franchise for the furnishing of water for fire protection.

**Licensing occupations.** — The council of the city of Wheeling is not authorized by its special charter, or by general statute, to enact an ordinance requiring the licensing of persons engaged in the trade or occupation of plumbing. State ex rel. Sheldon v. City of Wheeling, 146 W. Va. 691, 122 S.E.2d 427 (1961).

**Medical care.** — When there is an epidemic of smallpox or other dangerous contagious disease within the corporate limits, the council of a city, town or village has power to provide for the medical treatment and care of poor persons residing therein. Thomas v. Town of Mason, 39 W. Va. 526, 20 S.E. 580, 26 L.R.A. 727 (1894).

Where a judgment has been rendered for medical attendance on a pauper in a town in which it is not the duty of the common council to support the poor residing therein, the town is chargeable with the sum for which the judgment was rendered; and it is the duty of the common council of every town in this State to annually make up and enter on its journal an accurate estimate of all sums which are or may be lawfully chargeable to such town and which ought to be paid within the year, and to order a levy of so much as may in its opinion be necessary to pay the same. The payment of such judgment against a town, however erroneous, if no writ of error has been taken, should be so provided for by taxation; and if it be not done and it cannot be collected by execution, the payment should be enforced by mandamus. Wells v. Town of Mason, 23 W. Va. 456 (1884). See also Thomas v. Town of Mason, 39 W. Va. 526, 20 S.E. 580, 26 L.R.A. 727 (1894).

**Mobile homes.** — The legislature did not act arbitrarily or unreasonably in granting to municipalities the authority to regulate, with or without a comprehensive zoning plan, the placement of mobile homes within municipalities. Town of Stonewood v. Bell, 165 W. Va. 653, 270 S.E.2d 787 (1980).

By allowing municipalities to regulate mobile homes without a comprehensive zoning plan, the legislature may well have realized the difficulties many West Virginia towns might have in adopting a comprehensive zoning plan under §§ 8-24-1 et seq. Town of Stonewood v. Bell, 165 W. Va. 653, 270 S.E.2d 787 (1980).

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

**Pornography.** — Because there are no specific penalties in Chapter 61 with respect to the distribution of pornographic publications to adults, a municipality may by ordinance impose such penalties as it deems desirable, provided that such penalties are reasonable and that any imprisonment not exceed 30 days, and provided that such ordinance meets the standards for defining obscenity by the United States Supreme Court. Op. Att'y Gen., August 3, 1982, No. 3.

A municipal ordinance regulating the distribution of obscene matter to minors and of material depicting minors engaged in sexually explicit conduct may not impose penalties stricter than those set forth in § 61-8A-2 and

§ 61-8C-3, and in addition, § 8-11-1 requires that penalties be reasonable and imprisonment, if imposed, may not exceed 30 days. Op. Att'y Gen., August 3, 1982, No. 3.

**Sales tax.** — As the taxing power of a municipality depends upon legislative authority, expressed or necessarily implied, the city of Huntington is held without authority to levy a consumers sales tax under its charter or this section. Anderson-Newcomb Co. v. City of Huntington, 117 W. Va. 716, 188 S.E. 118 (1936). See also S.S. Kresge Co. v. City of Bluefield, 117 W. Va. 17, 183 S.E. 601 (1936).

**Special authority of city of Charleston.** — The city of Charleston, in its distinctive role as the capital of the state of West Virginia, may provide property to the state to be used as a state capitol or for other public buildings; this special authority of the city of Charleston extends to the Charleston Building Commission and enables it, also, to provide property for state purposes. State ex rel. Charleston Bldg. Comm'n v. Dial, 198 W. Va. 185, 479 S.E.2d 695 (1996).

**Trash removal.** — Under this section a city not only has the right to require the removal of trash and garbage from its streets, alleys and sidewalks, but from lots privately owned and adjacent thereto. Having the right to require such removal, it also has the right to enforce its requirements by its removal of prohibited substances. Hayes v. Town of Cedar Grove, 126 W. Va. 828, 30 S.E.2d 726, 156 ALR 702 (1944), overruled on other grounds, Long v. City of Weirton, 158 W. Va. 741, 214 S.E.2d 832 (1975).

**Utilities.** — A municipal corporation owning, operating and maintaining an electric lighting plant under this section, does not have power, expressed or implied, to construct lines beyond its corporate limits and thereby supply customers with electricity beyond such limits. And if it does so, its act is ultra vires, and no liability attaches, as for a tort in its commission. Hyre v. Brown, 102 W. Va. 505, 135 S.E. 656, 49 ALR 1230 (1926).

**Water supply.** — A municipal corporation, when necessary to do so to obtain a water supply for the use of the town or city, under this section may condemn land, though situated outside the corporate limits. White v. Romney, 69 W. Va. 606, 73 S.E. 323 (1911).

It is no defense to the collection of a judgment against city for breach of contract for waterworks plant that the payment of it would exceed the amount of the bonds authorized to be issued by the city for such construction, because the city, in the exercise of its power to construct the plant, was not limited to the amount of the bonds authorized to be issued. City of Wheeling v. John F. Casey Co., 89 F.2d 308 (4th Cir. 1937), cert. denied, 302 U.S. 697, 58 S. Ct. 15, 82 L. Ed. 538 (1937).

## § 8-12-5a. Limitations upon municipalities' power to restrict the purchase, possession, transfer, ownership, carrying, transport, sale and storage of certain weapons and ammunition.

The provisions of section five [§ 8-12-5] of this article notwithstanding, neither a municipality nor the governing body of any municipality may limit the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle or shotgun or any ammunition or ammunition components to be used therewith nor to so regulate the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition. Nothing herein shall in any way impair the authority of any municipality, or the governing body thereof, to enact any ordinance or resolution respecting the power to arrest, convict and punish any individual under the provisions of subdivision (16), section five of this article or from enforcing any such ordinance or resolution: Provided, That any municipal ordinance in place as of the effective date of this section shall be excepted from the provisions of this section: Provided, however, That no provision in this section may be construed to limit the authority of a municipality to restrict the commercial use of real estate in designated areas through planning or zoning ordinances. (1982, c. 111; 1999, c. 290.)

**Editor's notes.** — Concerning the reference to "the effective date of this section," Acts 1982, c. 111, which enacted this section, became effective June 9, 1982. Acts 1999, c. 290, which amended the section and added this language, became effective June 1, 1999.

**W. Va. Law Review.** — Halbrook, "Rationing Firearms Purchases and the Right to Keep Arms: Reflections on the Bills of Rights of Virginia, West Virginia, and the United States," see 96 W. Va. L. Rev. 1 (1993).

## § 8-12-5b. Municipal authority to enact ordinance; ordinance provisions defining terms; restricting certain activities in relation to obscene matter; and establishing penalties for violations.

(a) Notwithstanding the provisions of section one [§ 8-11-1], article eleven, chapter eight of this code, in addition to all other powers which municipalities now possess by law, every municipality and the governing body thereof may adopt the ordinance provided in subsection (b) of this section.

A municipality when adopting this ordinance, may delete therefrom such portions of paragraph (A), subdivision (4), subsection (b) of this section that it deems appropriate.

(b) The ordinance which municipalities may adopt pursuant to the power granted them under subsection (a) of this section shall be:

Section 1. Definitions.

For purposes of this ordinance:

(1) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.

(2) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.

(3) "Individual" means any human being regardless of age.

(4) "Obscene" means matter which the average individual applying contemporary community standards would find (i) taken as a whole, appeals to the prurient interest; (ii) depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and (iii) the matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:

(A) Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or

(B) Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.

(5) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(6) "Prepare" means to produce, publish or print.

(7) "Public display" means the placing of material on or in a billboard, viewing screen, theatre, marquee, newsstand, display rack, window, showcase, display case or similar public place so that material can be purchased or viewed by individuals.

Section 1a. Injunctive relief.

The circuit court shall have jurisdiction to issue an injunction to enforce the purposes of this ordinance upon petition by the attorney for the municipality or a representative thereof or any citizen of the municipality who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

Section 2. Activities prohibited; penalties.

Any person who knowingly sends or causes to be sent or causes to be brought into the municipality of (name of municipality) for sale or public display, or prepares, sells or makes a public display, or in the municipality of (name of municipality) offers to prepare, sell or make a public display, or has in his possession with the intent to sell or make a public display of any obscene matter to any individual, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned not more than thirty days or both fined and imprisoned. A person convicted of a second or subsequent offense under this ordinance is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned not more than six months or both fined and imprisoned.

Section 3. Employees acting within scope of employment shall not be prosecuted.

No employee shall be guilty of a violation of this ordinance when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer of a corporation which has a proprietary interest in such obscene matter.

Section 4. Exceptions.

Nothing in this ordinance shall be construed so as to apply to any person exercising a right secured by the constitution or laws of this State or of these United States. (1983, c. 50.)

## § 8-12-5c. Authority to enact ordinance restricting the location of businesses offering exotic entertainment.

(a) For the purposes of this section, the term "exotic entertainment" has the same meaning ascribed to it in section three-ii [§ 7-1-3ii], article one, chapter seven of this code.

(b) In the event a municipality has not created or designated a planning commission in accordance with the provisions of article twenty-four [§§ 8-24-1 et seq.] of this chapter, every municipality and the governing body of the municipality may, in addition to all other powers of municipalities, adopt an ordinance that limits the areas of the municipality in which businesses may offer exotic entertainment. Any such ordinance shall be subject to the provisions of section fifty [§ 8-24-50], article twenty-four of this chapter: Provided, That in the event of the partial or total loss of any existing business structure due to fire, flood, accident or any other unforeseen act, that business structure

may be repaired or replaced and the business use of that structure may continue notwithstanding the existence of any ordinance authorized by this section. Any such repair or replacement will be limited to restoring or replacing the damaged or lost structure with one reasonably similar, or smaller, in size as measured in square footage, and any enlargement of the business structure will subject the structure to any existing ordinance authorized by this section.

(c) Any person adversely affected by an ordinance enacted pursuant to the authority granted in subsection (b) of this section is entitled to seek direct judicial review with regard to whether the ordinance impermissibly burdens his or her right to establish a business offering exotic entertainment. (2002, c. 143.)

**Effective dates.** — Acts 2002, c. 143, provided that the act take effect May 16, 2002.

**Editor's notes.** — Acts 2002, cc. 10 and 143, both enacted a section numbered 8-12-5c; the section enacted by c. 10 was subsequently renumbered as 8-12-5d.

## § 8-12-5d. Regulation of amateur radio antennas.

(a) Any municipal ordinance or order concerning the regulation or placement of amateur radio antennas must:

(1) Comply with all Federal Communications Commission regulations and its rulings and orders;

(2) Reasonably accommodate amateur radio communications; and

(3) Represent the minimum practicable regulation to accomplish the municipality's legitimate purpose.

(b) Nothing in this section shall be deemed to prohibit a municipal governing body from taking action to protect or preserve historic buildings, structures, sites and districts that have been established by federal, state or local law. (2002, c. 10.)

**Effective dates.** — Acts 2002, c. 10, provided that the act take effect May 27, 2002.

**Editor's notes.** — Acts 2002, cc. 10 and 143, both enacted a section numbered 8-12-5c; the section enacted by c. 10 was subsequently renumbered as 8-12-5d.

### PART IV. CERTAIN SPECIFIC POWERS OF MUNICIPALITIES AND GOVERNING BODIES.

## § 8-12-6. Membership in association or league.

Every municipality is hereby empowered and authorized to become a member of an association or league having for its general purpose the exchange and dissemination of information and ideas designed for the more efficient administration and conduct of municipal government and affairs. In order to finance the maintenance of such an organization, each municipality is hereby empowered and authorized to pay into such an organization annual dues or membership fees in an amount to be fixed by the members thereof at the annual meeting of such organization. Such dues or membership fees may be appropriated by the governing body as a current expense item and included in the annual budget. (1945, c. 94; 1963, c. 119; 1969, c. 86.)

## § 8-12-7. Power and authority to purchase insurance and to indemnify officers, agents and employees.

(a) Every municipality shall have plenary power and authority to contract and expend public funds for the purchase of one or more policies of public liability insurance, with or without a sharing in the cost thereof by the officers, agents and employees of such municipality, providing the municipality and its officers, agents and employees insurance coverage for legal liability of said municipality and its officers, agents and employees for bodily injury, personal injury or damage (including, but not limited to, false arrest and false imprisonment) and property damage, and affording said municipality and its officers, agents and employees insurance coverage against any and all legal liability arising from, growing out of, by reason of or in any way connected with, any acts or omissions of said municipality, or its officers, agents or employees in the performance of their official duties. So long as the coverage aforesaid is obtained and remains in full force and effect as to the police officers of a municipality, the bond specified in section five [§ 61-7-5, see editor's notes], article seven, chapter sixty-one of this code shall not be required as to such police officers.

(b) Every municipality shall also have plenary power and authority to provide for the indemnification of its officers, agents and employees against any and all liability, losses, damages, expenses and costs, including court costs and reasonable and necessary attorney fees, arising from, growing out of, by reason of or in any way connected with any acts or omissions of said officers, agents or employees in the performance of their official duties. Such indemnification may be provided by a self-funding program, by expenditures from the general fund, or by the purchase of insurance as provided in subsection (a) of this section, with or without financial contribution or participation by such officers, agents and employees. Prior to the expenditure of any public funds pursuant to the power and authority conferred by the provisions of this subsection (b), the governing body shall determine by ordinance applicable to an entire class or classes of officers, agents or employees the manner in which such power and authority shall be exercised. (1949, c. 84; 1969, c. 86.)

**Editor's notes.** — The current version of § 61-7-5 contains no provision regarding a bond requirement.

Section 61-7-5, referred to in this section, was rewritten as part of a revision of c. 61, art. 7 in 1989. Consult that article for any new provisions concerning bonds.

**ALR references.** — Scope of provision in liability policy issued to municipal corporation or similar governmental body limiting coverage to injuries arising out of construction, maintenance, or repair work, 30 ALR5th 699.

## § 8-12-8. Group insurance programs authorized.

Every municipality shall have plenary power and authority to negotiate for, secure and adopt for the regular employees thereof (other than provisional, temporary, emergency and intermittent employees) who are in employee status with such municipality on and after the effective date of this section and for their spouses and dependents, a policy or policies of group insurance written by a carrier or carriers chartered under the laws of any state and duly

licensed to do business in this state and covering life; health; hospital care; surgical or medical diagnosis, care, and treatment; drugs and medicines; remedial care; other medical supplies and services; or any other combination of these; and any other policy or policies of group insurance which in the discretion of the governing body bear a reasonable relationship to the foregoing coverages. The provisions and terms of any such group plan or plans of insurance shall be approved in writing by the insurance commissioner of this state as to form, rate and benefits.

The municipality is hereby authorized and empowered to pay the entire premium cost, or any portion thereof, of said group policy or policies. Whenever the above-described regular employees shall indicate in writing that they have subscribed to any of the aforesaid insurance plans on a group basis and the entire cost thereof is not paid by the municipality, the municipality is hereby authorized and empowered to make periodic premium deductions of the amount of the contribution each such subscribing employee is required to make for such participation from the salary or wage payments due each such subscribing employee as specified in a written assignment furnished to the municipality by each such subscribing employee.

When a participating employee shall retire from his employment, he may, if he so elects, remain a member of the group plan and retain coverage for his spouse and dependents, by paying the entire premium for the coverage involved. Spouses and dependents of any deceased member may remain a member of the group plan by paying the entire premium for the coverage: Provided, That nothing herein shall be construed as prohibiting the municipality from paying a portion or all of the cost of any coverage. In the event that a municipality changes insurance carriers, as a condition precedent to any such change, the municipality shall assure that all retirees, their spouses and dependents, and the spouses and dependents of any deceased member are guaranteed acceptance, at the same cost for the same coverage as regular employees of similar age groupings, their spouses and dependents. (1969, c. 86; 1986, c. 116.)

**Editor's notes.** — Concerning the reference to "the effective date of this section," in the first paragraph, Acts 1969, c. 86, which enacted this section and added the language, became effective July 1, 1969; Acts 1986, c. 116, which amended this section, became effective March 8, 1986.

**Preemption.** — The Public Health Service Act, 42 U.S.C.S. §§ 300bb-1 et seq., does not preempt W. Va. Code § 8-12-8. State ex rel. Orlofske v. City of Wheeling, 212 W. Va. 538, 575 S.E.2d 148 (2002).

There is no conflict between the provisions of W. Va. Code § 8-12-8 and the goal of continuing health insurance coverage for government employees the Public Health Service Act, 42 U.S.C.S. §§ 300bb-1 et seq., seeks to accomplish. State ex rel. Orlofske v. City of Wheeling, 212 W. Va. 538, 575 S.E.2d 148 (2002).

**Intent of the 1986 amendment.** — The intent of the 1986 amendment to this section is to protect retirees from suffering the consequences of rate increases. State ex rel. City of Wheeling Retirees Ass'n v. City of Wheeling, 185 W. Va. 380, 407 S.E.2d 384 (1991).

**Continuation coverage.** — The plain language of W. Va. Code § 8-12-8 requires municipalities which provide health care coverage to retired municipal employees to provide continuation coverage to a deceased retired municipal employee's spouse and dependents without temporal limitation, as long as the premiums are paid. State ex rel. Orlofske v. City of Wheeling, 212 W. Va. 538, 575 S.E.2d 148 (2002).

**"Same cost for the same coverage."** — Pursuant to this section, the duty to provide the "same cost for the same coverage" is the responsibility of a municipality, and a writ of mandamus was a proper remedy to compel a city to provide retirees with group insurance at the same cost for coverage as regular employees. State ex rel. City of Wheeling Retirees Ass'n v.

City of Wheeling, 135 W. Va. 380, 407 S.E.2d 384 (1991).

Because this section is remedial, and therefore, to be liberally construed, even if a municipality does not change insurance carriers, retirees who are insured under the provisions of this section are to be insured at the same cost for the same coverage as regular employees of similar age groupings, where the present insurance carrier changes its rates and such change results in retirees being charged different rates for the same coverage as regular employees. State ex rel. City of Wheeling Retirees Ass'n v. City of Wheeling, 185 W. Va. 380, 407 S.E.2d 384 (1991).

## § 8-12-9. Power and authority to enact ordinance prohibiting discrimination with respect to housing accommodations.

Notwithstanding any statutory or charter provision to the contrary, the governing body of every municipality shall have plenary power and authority, by ordinance, to prohibit discrimination on the basis of race, creed, color or national origin in the sale, purchase, lease or rental of housing accommodations within the corporate limits of such municipality, and to impose fines for the violation of the provisions of any such ordinance. (1968, c. 37; 1969, c. 86.)

**W. Va. Law Review.** — For legislative comment on open housing, see 70 W. Va. L. Rev. 418 (1968).

## § 8-12-10. Purchasing; competitive bidding.

(a) Every municipality may provide for the centralized purchasing of materials, supplies and equipment; and the term "equipment," for the purposes of this section, shall include, but not be limited to, motor vehicles. Every municipality may, by agreement with the state director of the division of purchases of the department of finance and administration, purchase the same through such department, or may enter into agreements with one or more other municipalities, counties or county boards of education, or any combination thereof, for centralized purchasing for all governmental units which are parties to such agreement.

(b) Every municipality is hereby empowered and authorized to provide by ordinance whether competitive bidding is to be required in the purchase of materials, supplies and equipment and if so the type or types of purchases with respect to which the same shall be required and the method and manner in which bids shall be obtained. Any ordinance adopted by any municipality in accordance with the provisions of this subsection (b) shall supersede any provision pertaining to competitive bidding contained in the special legislative charter of such municipality. (1937, c. 56; 1969, c. 86.)

## § 8-12-11. Lease agreements for equipment or materials with option to cancel or renew for one year authorized.

Notwithstanding any other provision of this code or any charter provision to the contrary, the governing body of every municipality shall have plenary

power and authority to enter into and execute a lease agreement for the obtaining of equipment or material. Any such lease agreement shall not be void or voidable because it also provides (a) that title to the equipment or material shall vest in the municipality at or before the expiration of the leasehold term upon fulfillment of the terms and conditions stipulated in such lease agreement; (b) for application of the annual rental payments made thereunder toward the purchase price of such equipment or material, although such total rental payments under any such agreement are in excess of the cash price of the equipment or material described therein, whether such excess be by way of interest or a time-price differential; and (c) that the risk of loss of the equipment or material shall be borne by the municipality. Any such lease agreement shall be void, however, unless such agreement provides that the municipality shall have the following options thereunder during each fiscal year of the agreement: (1) The option to terminate the agreement and return the equipment or material without any further obligation on the part of the municipality; (2) the option to continue the agreement for an additional rental period not to exceed one year in length; and, when the agreement contains the provisions described in (a), (b) and (c) above, (3) the option to pay in advance at any time during any fiscal year the balance due under such agreement, with an appropriate rebate of the unearned interest or time-price differential.

The funds for the initial rental payment under any such agreement must be legally at the disposal of the municipality for expenditure in the fiscal year in which such agreement is executed, and in the event the municipality elects during any subsequent fiscal year to continue the agreement for any additional rental period or to pay in advance the balance due, the funds for the additional rental period or the funds to be used to pay the balance in advance must be legally at the disposal of the municipality for expenditure in the fiscal year in which the municipality elects to continue the agreement or to pay in advance the balance due, as the case may be. (1969, c. 86.)

## § 8-12-12. Power and authority to lease, establish, maintain and operate off-street parking facility.

Every municipality shall have plenary power and authority to enter into a lease with the owner or owners of any real property situate within the corporate limits of such municipality by which such real property is demised, leased and let to such municipality for an off-street parking facility (including parking lots, buildings, ramps, parking meters and other appurtenances deemed necessary, appropriate or incidental to the regulation, control and parking of motor vehicles), which off-street parking facility is hereby declared to be a municipal public work, and every such municipality shall have plenary power and authority to establish, maintain and operate such parking facility. Every such lease shall be authorized by an ordinance adopted by the municipality. Every municipality shall have this power and authority whether such real property is at the time of the execution of such lease already equipped, maintained and operated, in whole or in part, as a parking facility or whether such real property is at such time unimproved and is to be, under the terms of

the lease, improved by the installation of parking meters, lighting equipment, pavement or other equipment necessary, appropriate, useful, convenient or incidental to the use of such property for such purpose.

Any such ordinance may provide that the police force or department of such municipality shall police the parking facility; and that overtime parking at the facility or other violations of the ordinance shall be a misdemeanor punishable as provided in said ordinance. Any such ordinance shall also provide for the collection of reasonable charges for the use of such parking facility by the public generally, and any such ordinance may be amended from time to time. Any lease entered into by and between any such municipality and the owner or owners of any such real property may contain such terms and conditions as may be agreed upon between the parties, not inconsistent with any of the provisions of this section or other provisions of law. The ordinance authorizing any such lease may also specify terms and conditions which must be contained in such lease.

Under no circumstances whatever shall any obligation incurred under the provisions of this section or any such lease be deemed to be or create an indebtedness of the municipality, the governing body or any member thereof, any officer thereof, or other municipal official, and all of the expenses of whatever kind, nature or character incident to the establishment, maintenance and operation of such parking facility, including, but not limited to, such rental payments as are provided for in the lease and the cost of policing the facility, shall be paid solely from revenues derived from such parking facility, and from revenues derived from other parking facilities or meters not pledged to pay for such other parking facilities or meters. No member of the governing body of any such municipality, or any officer thereof, or other municipal official, shall under any circumstances be personally liable under any such lease or upon any obligation of any kind, nature or character arising under the provisions of this section.

The power and authority herein granted shall be in addition to and not in derogation of any power and authority vested in any municipality under any constitutional, statutory or charter provision now or hereafter in effect. This section shall, without reference to any other provisions of this code or any other statute or any charter, be deemed full authority for the acquisition of any such real property by lease for a parking facility, for the establishment, maintenance and operation of any such parking facility and for the enactment of an ordinance as hereinbefore specified. This section shall be construed as an additional alternative method for providing off-street parking facilities, and shall not in any way limit the provisions of article sixteen [§§ 8-16-1 et seq.] of this chapter authorizing the establishment, maintenance, operation and financing of such facilities by the issuance of revenue bonds.

This section, being necessary for the public safety and welfare, shall be liberally construed to effectuate its purposes. (1966, c. 46; 1969, c. 86.)

## § 8-12-13. Building regulation; general and special codes; state building code.

(a) The governing body of every municipality shall have plenary power and authority by ordinance or a code of ordinances to:

(1) Regulate the erection, construction, repair or alteration of structures of every kind within the corporate limits of the municipality, prohibit, within specified territorial limits, the erection, construction, repair or alteration of structures of wood or other combustible material, and regulate excavations upon private property;

(2) Regulate electric wiring by prescribing minimum specifications to be followed in the installation, alteration or repair thereof; and

(3) Regulate plumbing by prescribing the minimum specifications to be followed in the installation, alteration or repair of plumbing, including equipment, water and sewer pipe, traps, drains, cesspools and septic tanks.

(b) Notwithstanding the provisions of subsection (a), all existing municipal building codes are void one year after the promulgation of a state building code by the state fire commission as provided in section five-b [§ 29-3-5b], article three, chapter twenty-nine of this code.

Upon the voidance of the municipality's existing building code, if the municipality votes to adopt a building code, it must be the state building code promulgated pursuant to section five-b, article three, chapter twenty-nine of this code.

(c) The governing body of every municipality shall have plenary power and authority by ordinance or a code of ordinances to adopt such state building code promulgated by the state fire commission. (1937, c. 56; 1969, c. 86; 1988, c. 114.)

**Cross references.** — Termination of local building codes, adoption of state building code, §§ 7-1-3n, 29-3-5b.

**ALR references.** — Plumbing regulations as within powers conferred on municipality by charter or statute, 22 ALR2d 826.

Liability of one excavating on private property for injury to public utility cable, conduits, or the like, 28 ALR5th 603.

Applicability of zoning regulations to governmental projects or activities, 53 ALR5th 1.

**Building ordinance found.** — Where ordinance that limited lot requirements and provided space restrictions also related to how the use of a certain area is undertaken and the quality and quantity of the buildings in question, and required documentation of road access, traffic generation, traffic flow, and public services, the ordinance was a building ordinance rather than a zoning ordinance. Bittinger v. Corporation of Bolivar, 183 W. Va. 310, 395 S.E.2d 554 (1990).

**Public building.** — A building constructed by the state office building commission (now state building commission), created by § 5-6-1, on property purchased under the General Appropriation Act, is a public building, and is not subject to the building code of a city. City of Charleston v. Southeastern Constr. Co., 134 W. Va. 666, 64 S.E.2d 676 (1950).

**Zoning.** — Both zoning regulations and planning or building regulations involve the use of a certain area of the community. The distinguishing factor between the two types of permits is that a building permit involves how that use is undertaken, while a zoning permit concerns whether a certain area may be used for a particular purpose. Bittinger v. Corporation of Bolivar, 183 W. Va. 310, 395 S.E.2d 554 (1990); Harrison v. Town of Eleanor, 191 W. Va. 611, 447 S.E.2d 546 (1994).

**Applied** in Teller v. McCoy, 162 W. Va. 367, 253 S.E.2d 114 (1978).

**Stated** in State ex rel. State Line Sparkler of W. Va., Ltd. v. Teach, 187 W. Va. 271, 418 S.E.2d 585 (1992).

## § 8-12-14. Permits for construction and alteration.

The governing body of every municipality has plenary power and authority to require a permit as a condition precedent to the erection, construction, repair or alteration of any structure or of any equipment or part of a structure which is regulated by state law or municipal ordinance: Provided, That no such permits may be required of the state, a county or other governmental entity, its contractors, agents or employees for the erection, construction, repair or alteration of any structure or of any equipment or part of a structure designated for use by the state, a county or other governmental entity. (1937, c. 56; 1969, c. 86; 1992, c. 146.)

**Code of State Rules References.** — Electrician licensing regulations, 87 CSR 2, effective July 1, 1993.

**W. Va. Law Review.** — For survey of W. Va. law on local government (maximum age restrictions on employment) for the year 1976-1977, see 79 W. Va. L. Rev. 469 (1977).

**Building ordinance found.** — Where ordinance that limited lot requirements and provided space restrictions also related to how the use of a certain area is undertaken and the quality and quantity of the buildings in question, and required documentation of road access, traffic generation, traffic flow, and public services, circuit court judge did not abuse his discretion in finding that the ordinance was a building ordinance rather than a zoning ordinance. Bittinger v. Corporation of Bolivar, 183 W. Va. 310, 395 S.E.2d 554 (1990).

**Zoning regulations and building regulations distinguished.** — Both zoning regulations and planning or building regulations involve the use of a certain area of the community. The distinguishing factor between the two types of permits is that a building permit involves how that use is undertaken, while a zoning permit concerns whether a certain area may be used for a particular purpose. Bittinger v. Corporation of Bolivar, 183 W. Va. 310, 395 S.E.2d 554 (1990).

**Quoted** in Hutchison v. City of Huntington, 198 W. Va. 139, 479 S.E.2d 649 (1996).

## § 8-12-14a.

Repealed by Acts 1989, c. 79.

**Editor's notes.** — *Former* § 8-12-14a (enacted by Acts 1973, c. 86), concerning certification of electricians, definitions, examinations, fees, expiration and renewal, rules and regulations, certification without examination, deposit of fees, section exclusive, compliance action, was repealed by Acts 1989, c. 79.

## § 8-12-15. Municipal inspection.

The governing body of every municipality shall have plenary power and authority to provide for the entering and inspection of private premises to aid in the enforcement of any state law or municipal ordinance: Provided, That this section shall not be construed as purporting to authorize an unreasonable search and seizure prohibited by section 6, article III of the Constitution of this State. (1937, c. 56; 1969, c. 86.)

## § 8-12-16. Ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings unfit for human habitation; procedures.

(a) Plenary power and authority are hereby conferred upon every municipality to adopt ordinances regulating the repair, alteration or improvement, or

the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare.

(b) The governing body in formally adopting such ordinances shall designate the enforcement agency, which shall consist of the mayor, the municipal engineer or building inspector and one member at large, to be selected by and to serve at the will and pleasure of the mayor. The ranking health officer and fire chief shall serve as ex officio members of such enforcement agency.

(c) Any ordinance adopted pursuant to the provisions of this section shall provide fair and equitable rules of procedure and any other standards deemed necessary to guide the enforcement agency, or its agents, in the investigation of dwelling or building conditions, and in conducting hearings: Provided, That any entrance upon premises for the purpose of making examinations shall be made in such manner as to cause the least possible inconvenience to the persons in possession.

(d) The governing body of every municipality shall have plenary power and authority to adopt an ordinance requiring the owner or owners of any dwelling or building under determination of the state fire marshal, as provided in section twelve [§ 29-3-12], article three, chapter twenty-nine of this code, or under order of the enforcement agency of the municipality, to pay for the costs of repairing, altering, or improving, or of vacating and closing, removing or demolishing any dwelling or building. Every municipality shall also have the right to file a lien against the real property in question for an amount not to exceed the assessed value of the property as recorded in the office of the county assessor, or to institute a civil action in a court of competent jurisdiction against the landowner or other responsible party for all costs incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

Not less than ten days prior to instituting a civil action as provided for in this section, the governing body of the municipality shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body's intention to institute such action. The notice shall be sent to the most recent address of the landowner of record in the office of the assessor of the county where the subject property is located. If, for any reason, such certified mail is returned without evidence of proper receipt thereof, then in such event, the governing body shall cause a Class III-0 legal advertisement to be published in a newspaper of general circulation in the county wherein the subject property is located and post notice on the front door or other conspicuous location on the subject property.

In the event any landowner desires to contest any demand brought forth pursuant to this section, the landowner may seek relief in a court of competent jurisdiction.

All orders issued by the enforcement agency shall be served in accordance with the law of this state concerning the service of process in civil actions, and

shall, in addition thereto, be posted in a conspicuous place on the premises affected by the complaint or order: Provided, That no ordinance shall be adopted without providing therein for the right to apply to the circuit court for a temporary injunction restraining the enforcement agency pending final disposition of the cause. In the event such application is made, a hearing thereon shall be had within twenty days, or as soon thereafter as possible, and the court shall enter such final order or decree as the law and justice may require. (1941, c. 68; 1969, c. 86; 1996, c. 95.)

**Rules of Civil Procedure.** — As to preliminary injunctions, see Rule 65. As to applicability of rules to review of decisions of administrative agencies, see Rule 81(a)(1).

**Priority of demolition lien determined by date of filing.** — Municipal demolition liens under this section are required to be recorded in the office of the clerk of the county commission to provide notice under § 38-10C-1 and the priority of such liens in relation to other perfected liens is determined by the chronological order of the filings of liens in the clerk's office, except for real property taxes which do not need to be recorded. City of Parkersburg v. Carpenter, 507 S.E.2d 120 (W. Va. 1998).

**Applied** in Teller v. McCoy, 162 W. Va. 367, 253 S.E.2d 114 (1978).

**Quoted** in Bittinger v. Corporation of Bolivar, 183 W. Va. 310, 395 S.E.2d 554 (1990).

**Cited** in City of Bluefield v. Taylor, 179 W. Va. 6, 365 S.E.2d 51 (1987).

PART V. SALE OR LEASE OF MUNICIPAL PUBLIC UTILITY.

## § 8-12-17. Sale or lease of municipal public utility.

In any case where a municipality shall own a gas system, an electric system, a waterworks or other public utility, and the governing body thereof shall deem it for the best interest of such municipality that such utility be sold or leased, the governing body shall, by ordinance legally adopted, submit to the qualified voters of such municipality, at any regular municipal election or at any special municipal election called for that purpose, the question of making or effecting such sale or lease. In such case the governing body shall, in the ordinance submitting such question to a vote, set forth in full the terms of such proposed sale or lease, the name of the proposed purchaser or lessee and the date of such election, and a notice containing this information shall be published as a Class II-0 legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. Such election shall be held in all respects in compliance with the provisions of chapter three [§§ 3-1-1 et seq.] of this code, so far as the same are applicable and not inconsistent herewith, and the provisions of article five [§§ 8-5-1 et seq.] of this chapter. If a majority of the legal votes cast at such election upon such question be in favor of the proposed sale or lease of such utility, the governing body, upon the ascertainment of the result of such election, shall have full power and authority to proceed to execute or effect such sale or lease in accordance with the terms and conditions prescribed in the ordinance as aforesaid, and shall have power to do any and all things necessary or incident thereto: Provided, That if at any time after such election and before the execution of the authority under the ordinance, any person should present to the governing body an offer to buy such public utility at a price which exceeds by at least five percent the sale

price which shall have been so voted upon and authorized or to lease the same upon terms which the governing body, in its discretion, shall consider more advantageous to the municipality than the terms of the lease which shall have been authorized by vote as aforesaid, the governing body shall have the power to accept such subsequent offer, and to make such sale or such lease to the person making the offer, without resubmitting the question to a vote; but, if a sale shall have been authorized by vote as aforesaid, and such subsequent proposition be for a lease, or if a lease shall have been so authorized, and the subsequent proposition shall be for a sale, the governing body shall have no power to accept the same without submitting the question thereof to a vote of the people as first above provided. Before any such second or subsequent proposition shall be submitted to a vote, after a sale or lease shall have been authorized at an election held hereunder, the person making such proposition shall furnish bond, with security to be approved by the governing body, in a penalty of not less than twenty-five percent of such proposed bid, conditioned to carry such proposition into execution, if the same shall be approved at the election to be called thereon. In any case where any such public utility shall be sold or leased by the governing body as hereinabove provided, no part of the moneys derived from such sale or lease shall be applied to the payment of current expenses of the municipality, but the proceeds of such sale or lease shall be applied in payment and discharge of any bonded indebtedness created in respect to such public utility, and in case there be no bonded indebtedness, the governing body, in its discretion, shall have the power and authority to expend all such moneys when received for the purchase or construction of fire-fighting equipment and buildings for housing such equipment, a municipal building or city hall, and the necessary land upon which to locate the same, or for the construction of paved streets, avenues, roads, alleys, ways, sidewalks, sewers and other like permanent improvements, and for no other purposes. In case there be a surplus after the payment of such bonded indebtedness, the surplus shall be used as aforesaid.

The requirements of this section shall not apply to the sale or lease of any part of the properties of any such public utility determined by the governing body to be unnecessary for the efficient rendering of the service of such utility. (1917, c. 111, § 59; Code 1923, c. 47, § 60; 1967, c. 105; 1969, c. 86; 1974, c. 78.)

**ALR references.** — Power of municipality to sell, lease, or mortgage public utility plant or interest therein, 61 ALR2d 595.

PART VI. SALE, LEASE OR DISPOSITION OF OTHER MUNICIPAL PROPERTY.

## § 8-12-18. Sale, lease or disposition of other municipal property.

(a) Every municipality, municipal building commission created pursuant to article thirty-three of this chapter and municipal development authority created pursuant to article twelve [§§ 7-12-1 et seq.], chapter seven of this code is authorized to sell, lease as lessor or dispose of any of its real or personal

property or any interest therein or any part thereof (other than a public utility which shall be sold or leased in accordance with the provisions of section seventeen [§ 8-12-17] of this article), as authorized in article five [§§ 1-5-1 et seq.], chapter one of this code, or to the United States of America or any agency or instrumentality thereof, or to the state or any agency or instrumentality thereof, for a public purpose for an adequate consideration, without considering alone the present commercial or market value of such property.

(b) In all other cases involving a sale, any municipality is hereby empowered and authorized to sell any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration, the property to be sold at public auction at a place designated by the governing body, but before making any sale, notice of the time, terms and place of sale, together with a brief description of the property to be sold, 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 the publication shall be the municipality. The requirements of notice and public auction shall not apply to the sale of any one item or piece of property of less value than one thousand dollars and under no circumstances shall the provisions of this section be construed as being applicable to any transaction involving the trading in of municipally owned property on the purchase of new or other property for the municipality and every municipality shall have plenary power and authority to enter into and consummate any trade-in transaction.

(c) In all other cases involving a lease, any municipality is hereby empowered and authorized to lease as lessor any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration and for a term not exceeding fifty years. Every lease shall be authorized by resolution of the governing body of the municipality, which resolution may specify terms and conditions which must be contained in such lease: Provided, That before any proposed lease is authorized by resolution of the governing body, a public hearing on the proposed lease shall be held by the governing body after notice of the date, time, place and purpose of the public hearing has been 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 the publication shall be the municipality. The power and authority granted in this subsection shall be in addition to, and not in derogation of, any power and authority vested in any municipality under any constitutional or other statutory provision now or hereafter in effect. (1969, c. 86; 1973, c. 87; 1991, c. 110; 2001, c. 72.)

**Constitutionality.** — This section, insofar as it authorizes a municipality to lease its real or personal property for a term not exceeding thirty years, does not violate the Constitution of West Virginia. Op. Att'y Gen., April 4, 1974.

**Purpose.** — The purpose behind the public auction requirement is to insure that all prospective purchasers of the property stand on equal footing one to the other and to maximize the purchase price of the property for the benefit of the city by awarding the property to the responsible bidder offering the most advantageous price. A public auction also permits a prospective purchaser to visualize the uses to which the property may be put and to bid accordingly. Rogers v. City of South Charleston, 163 W. Va. 285, 256 S.E.2d 557 (1979).

**Exchange or trade.** — A city may agree to exchange or trade in municipally owned real property with a private individual, person,

**Part III. Special Charges for Municipal Services.**

Sec.
8-13-13. Special charges for municipal services.

**Part IV. Penalties.**

8-13-14. Penalties.

**Part V. Collection of Municipal Taxes, Fines and Assessments.**

8-13-15. Collection of municipal taxes, fines and assessments.
8-13-15a. Providing for payment at banking institutions.
8-13-16. Remedies for failure to collect, account for or pay over moneys.

**Part VI. Accounting Principles; Funds; Disbursements.**

8-13-17. Reports, etc., to conform to fiscal year.
8-13-18. Audits and accounts.
8-13-19. Capital reserve fund.
8-13-19a. Special account for federal and state grants-in-aid authorized.
8-13-20. Balances in municipal bond commission fund may be transferred or remitted to general fund where bonded indebtedness has been paid or where defeasance or payment of bonded indebtedness has been provided for; use of transferred or remitted funds.
8-13-21. Disposition of funds for public works when materials, etc., not available.
8-13-22. Payment of money out of municipal treasury must be by order; signing of orders by mechanical or electrical devices; officers jointly and severally liable for neglect; forgery; penalty.
8-13-22a. Investment of municipal funds.
8-13-22b. Voluntary direct deposits by municipal treasurer of salaries of employees to banks or other financial institutions.
8-13-22c. Restrictions on investment.
8-13-22d. Payment of legitimate uncontested invoices; interest on late payments; "Prompt Pay Act of 1995."

**Part VII. Municipal Financial Statements.**

8-13-23. Preparation, publication and disposition of financial statements.

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**Revision of chapter.** — See note under the same catchline at the beginning of this chapter.

**Michie's Jurisprudence.** — Municipal taxation, 13B M.J., Municipal Corporations, §§ 115-126.

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PART I. POWERS OF TAXATION.

## § 8-13-1. General property and benefit taxes.

Every municipality shall have plenary power and authority:

(1) To levy and collect taxes on real and personal property for any municipal purpose within the limitations and subject to the classifications prescribed by the Constitution and the general law of this State; and the assessment, levy and collection of such taxes shall be governed by the provisions of chapters eleven [§§ 11-1-1 et seq.] and eleven-a [§§ 11A-1-1 et seq.] of this code; and

(2) To finance public improvements by the levy and collection of special assessments or other benefit taxes in the manner and to the extent permitted by article eighteen [§§ 8-18-1 et seq.] of this chapter and by any other general law. The entire cost of sidewalk construction, including curbing, may be imposed upon the owners of abutting property and made a lien thereon which shall have priority over all other liens except tax liens. (1937, c. 56; 1969, c. 86.)

firm, etc., owning the real property the city desires to acquire, and such an exchange or trade-in transaction may be consummated without resort to a public auction. Op. Att'y Gen., Aug. 21, 1974.

**Municipal agencies.** — In the absence of express statutory authorization regarding the manner of sale, a city board of park and recreation com- missioners, a public corporation, walks in the shadow of the city and any sale or conveyance of such property to a private or special interest must be accomplished by means of a public auction held upon proper notice as provided in subsection (b) of this section. Rogers v. City of South Charleston, 163 W. Va. 285, 256 S.E.2d 557 (1979).

PART VII. EXTRATERRITORIAL EXERCISE OF POWERS AND AUTHORITY.

## § 8-12-19. Extraterritorial exercise of powers and authority.

Wherever the powers and authority granted in this chapter cannot be reasonably and efficiently exercised by confining the exercise thereof within the corporate limits of the municipality, the powers and authority of the municipality shall extend beyond the corporate limits to the extent necessary to the reasonably efficient exercise of such powers and authority within the corporate limits. Such powers and authority, unless otherwise provided in this code or elsewhere in law, shall not, however, extend more than one mile beyond the corporate limits, and such powers and authority shall not extend into the corporate limits of another municipality without the consent of the governing body thereof. (1969, c. 86.)

PART VIII. SUITS AGAINST MUNICIPALITIES.

## § 8-12-20.

Repealed by Acts 1990, c. 139.

**Editor's notes.** — Former § 8-12-20 (enacted by Acts 1969, c. 86 and amended by Acts 1976, c. 77), concerning notice to be given of claims for damages due to alleged negligence; waiting period, was repealed by Acts 1990, c. 139.

# ARTICLE 13.

# TAXATION AND FINANCE.

**Part I. Powers of Taxation.**

Sec.
8-13-1. General property and benefit taxes.
8-13-2. Correcting erroneous tax levy.
8-13-3. Hotel occupancy tax.
8-13-4. Municipal license and tax thereon when state license required.
8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.
8-13-5a. Public utilities tax.
8-13-6. Amusement tax.
8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.
8-13-8. License tax on horse racing and dog racing.
8-13-9. Motor vehicle operator's tax.
8-13-10. Domestic animal tax.
8-13-11. Preservation of prior taxing powers of cities.

**Part II. Borrowing Power.**

8-13-12. Borrowing power.

# State of West Virginia

# Certificate

*I, Betty Ireland, Secretary of State of the State of West Virginia, hereby certify that*

**THIS IS A TRUE COPY OF CHAPTER 8, ARTICLE 16 OF THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.**

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

March 29, 2005

*Secretary of State*

## § 8-15A-5. Certification requirements.

Standards for certification must meet or exceed those of the National Fire Protection Association Standards No. 1001 as amended and updated from year to year. (2002, c. 147.)

## § 8-15A-6. Review of certification.

The state board shall annually review the training curriculum of local training boards offered pursuant to the provisions of this article, and shall make recommendations to improve the quality and sufficiency of training to secure certification of paid firefighters. (2002, c. 147.)

## § 8-15A-7. Compliance.

The state board shall ensure employer and employee compliance with this article. The chief of the paid fire department and the local training board shall see and assure compliance with all established criteria.

The provisions of this article shall be liberally construed to accomplish its objectives and purposes. (2002, c. 147.)

# ARTICLE 16.

# MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

**Part I. Definitions; Authorization of Municipal Public Works.**

Sec.

8-16-1. Definitions.
8-16-2. Municipalities authorized to construct, etc., public works and to acquire property; payment of costs.
8-16-3. Special provisions as to certain municipal public works.

**Part II. Control of Governing Body or Board.**

8-16-4. Construction, etc., to be under control of governing body or appointed board, etc.
8-16-4a. Additional special provisions as to motor vehicle parking facilities.
8-16-4b. Additional special provision as to the use of space in motor vehicle parking facilities.

**Part III. General Powers and Authority.**

8-16-5. Powers of board.
8-16-6. Preliminary expenses.
8-16-7. Ordinance for construction, etc., of works.

**Part IV. Right of Eminent Domain.**

Sec.

8-16-8. Right of eminent domain.

**Part V. Revenue Bond Financing.**

8-16-9. Bonds for improvements, etc., of works.
8-16-10. Items of expense included in cost of works.
8-16-11. No municipality is to incur any obligation not payable from proceeds of bonds; exemption from taxation.
8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates.
8-16-13. Obligations not to bind municipal official or officer or member of board personally.
8-16-14. Additional bonds for improvements, etc., of works.
8-16-15. How proceeds of bonds applied.
8-16-16. Bonds secured by trust indenture between municipality or municipalities and corporate trustee.
8-16-17. Sinking fund; sinking fund commis-

Sec.
sion; transfer of funds; purchase of outstanding bonds.

**Part VI. Imposition of Rates or Charges.**

8-16-18. Rates, fees or charges for services rendered by works.
8-16-18a. Pledge of the hotel occupancy tax; contribution of revenues to building commission.
8-16-19. Appeal to public service commission from rates fixed.

**Part VII. Accounting System and Records.**

8-16-20. Accounting system; yearly audit; custodian of funds.

**Part VIII. Rates or Charges for Municipalities.**

8-16-21. Governmental entities to pay established rates, fees or charges for services rendered to it or them.

**Part IX. Liens and Protection of Bondholders.**

Sec.
8-16-22. Statutory mortgage lien upon works created.
8-16-23. Acquisition of property on which lien exists.
8-16-24. Protection and enforcement of rights of bondholders, etc.; receivership; effect of receivership on lease agreement.

**Part X. Construction; Extraterritorial Jurisdiction.**

8-16-25. Article confers additional power and authority; extraterritorial jurisdiction.
8-16-26. Construction of power and authority conferred.
8-16-27. Article liberally construed.
8-16-28. Reference to "municipal authorities" or "municipal authority" elsewhere in law to mean "governing body" for the purposes of this article only.

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**Revision of chapter.** — See note under the same catchline at the beginning of this chapter.

**Michie's Jurisprudence.** — As to power of municipalities to issue bonds generally, see 13B M.J., Municipal Corporations §§ 31-40.

**ALR references.** — What entities or projects are "public" for purposes of state statutes requiring payment of prevailing wages on public works projects, 5 ALR5th 470.

**Construction.** — For cases construing article 4A of former chapter 8, dealing with municipal public works and bond issues, see State ex rel. Bibb v. Chambers, 138 W. Va. 701, 77 S.E.2d 297 (1953); State ex rel. Holbert v. Robinson, 134 W. Va. 524, 59 S.E.2d 884 (1950); State ex rel. Klostermeyer v. City of Charleston, 130 W. Va. 490, 45 S.E.2d 7 (1947); City of Huntington v. Heffley, 127 W. Va. 254, 32 S.E.2d 456 (1944); Smith v. City of Parkersburg, 125 W. Va. 415, 24 S.E.2d 588 (1943); City of Moundsville v. Brown, 125 W. Va. 779, 25 S.E.2d 900 (1943), modified, 127 W. Va. 602, 34 S.E.2d 321 (1945); Duling Bros. Co. v. City of Huntington, 120 W. Va. 85, 196 S.E. 552 (1938).

**Easements.** — A municipality has no authority to grant a perpetual easement or right-of-way over and across a municipal parking lot to a private banking firm to be used by the bank for ingress and egress to a proposed drive-in facility of the bank. 52 Op. Att'y Gen. 429 (1967).

**Exercise of legislative powers.** — Court did not enjoin municipal legislative body from exercising legislative powers in enacting a municipal ordinance involving administration of a floodwall system, concerning the public safety and health, where there was nothing in the petition for the injunction to indicate that enactment or enforcement of the ordinance would cause irreparable injury to the injunction petitioners or that there was no adequate remedy at law. Perdue v. Ferguson, 177 W. Va. 44, 350 S.E.2d 555 (1986).

**Cited** in State ex rel. Bibb v. Chambers, 138 W. Va. 701, 77 S.E.2d 297 (1953); State ex rel. Holbert v. Robinson, 134 W. Va. 524, 59 S.E.2d 884 (1950); State ex rel. Klostermeyer v. City of Charleston, 130 W. Va. 490, 45 S.E.2d 7 (1947); City of Huntington v. Heffley, 127 W. Va. 254, 32 S.E.2d 456 (1944); Smith v. City of Parkersburg, 125 W. Va. 415, 24 S.E.2d 588 (1943); City of Moundsville v. Brown, 125 W. Va. 779, 25 S.E.2d 900 (1943), modified, 127 W. Va. 602, 34 S.E.2d 321 (1945); Duling Bros. Co. v. City of Huntington, 120 W. Va. 85, 196 S.E. 552 (1938); State ex rel. Kanawha County Bldg. Comm'n v. Paterno, 160 W. Va. 195, 233 S.E.2d 332 (1977).

PART I. DEFINITIONS; AUTHORIZATION OF MUNICIPAL PUBLIC WORKS.

## § 8-16-1. Definitions.

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

(a) "Municipal public works" or "works" or "projects" means the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, libraries, museums, other public buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, stormwater systems and associated stormwater management program, flood walls, culverts, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities considered necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), farms, dormitories, apartments and other housing facilities for the students and faculties of institutions of higher education; facilities providing housing for the elderly, including, but not limited to, life care facilities, congregate living facilities and adult residential facilities, stadiums, gymnasiums, sports arenas, auditoriums, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening or otherwise improving of any street, avenue, road, alley or way, or the building or renewing of sidewalks, where works or projects will be made self-supporting, and the cost thereof, together with the interest thereon, will be returned within a reasonable period, not exceeding forty years, by means of tolls, fees, rents, special assessments or charges other than taxation; and the terms shall also mean any works or project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient or incidental appurtenances and equipment in connection with any one or more of the above.

(b) "Stormwater systems" 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, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations. The term "stormwater systems" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

(c) "Stormwater management program" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater systems, and shall include, but not be 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. The term "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. (1935, c. 68, § 1; 1945, c. 90; 1951, c. 136; 1955, c. 121; 1959, c. 116; 1961, c. 100; 1969, c. 86; 1981, c. 164; 2001, c. 212.)

**ALR references.** — What entities or projects are "public" for purposes of state statutes requiring payment of prevailing wages on public works projects, 5 ALR5th 470.

**W. Va. Law Review.** — Dobbs and Joslin, Bankruptcy Preference Concerns in Industrial Development Bond Financing, 84 W. Va. L. Rev. 573 (1982).

**Building.** — For purposes of public financing, the definition of municipal public works extended to a building that was to be purchased and renovated by the Charleston Building Commission, but ultimately leased to the state of West Virginia. State ex rel. Charleston Bldg. Comm'n v. Dial, 198 W. Va. 185, 479 S.E.2d 695 (1996).

**Legislative intent.** — A reading of this section in pari materia with § 8-16-3 reveals that it was the intent of the legislature to permit municipalities to pledge the resources generated by the imposition of fines and fees for a period of not more than twenty (20) years only for jail facilities used for municipal prisoners. Op. Att'y Gen., June 7, 1988, No. 28.

**Revenue bonds.** — Neither the "self supporting" provision of this section nor the "no obligation" provision of § 8-16-11 prevents a municipality from transferring funds to a public works authority to service revenue bonds. Op. Att'y Gen., Aug. 31, 1979, No. 27.

**Self-supporting requirement.** — The requirement that public works constructed shall be self-sustaining is held to be inoperative where the work, like a flood wall, is incapable of producing an operating revenue. Duling Bros. Co. v. City of Huntington, 120 W. Va. 85, 196 S.E. 552 (1938).

There is no requirement in this section that municipal public works be self-supporting at the onset. The provision only requires that the works or projects "will be made self-supporting." Op. Att'y Gen., Aug. 31, 1979, No. 27.

## § 8-16-2. Municipalities authorized to construct, etc., public works and to acquire property; payment of costs.

Every municipality is and any two or more municipalities acting jointly, whether situate in the same county or different counties, are, hereby empowered and authorized to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair (including replacements), maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, and shall have plenary power and authority to acquire by gift, grant, purchase, condemnation or otherwise, and thereafter hold, all necessary lands, rights, easements, rights-of-way, franchises and other property therefor within or without, or partly within and partly without, the corporate limits of any such municipality or municipalities, and to issue revenue bonds to pay the costs of such public works and properties: Provided, That this section shall not be construed to authorize any municipality to construct, reconstruct, establish, acquire, improve, renovate,

extend, enlarge, increase, own, equip, repair (including replacements), maintain or operate any works which would render a service already being adequately rendered within such municipality. No obligation shall be incurred by any municipality in such construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement or increase, except such as is payable solely from the funds provided under the authority of this article. (1935, c. 68, § 2; 1969, c. 86.)

**W. Va. Law Review.** — Wakefield, Problems Associated With the Management of Solid Wastes: Is There a Solution in the Offing?, 83 W. Va. Rev. 131 (1980).

**Proceeds.** — The proceeds of a series of general obligation bonds of a municipality issued for the purpose of defraying a part of the expense of completing the construction and equipment of a municipal public works, the residue of which expense is to be paid from the sale of revenue bonds issued under this article, may be used for that purpose. Warden v. City of Grafton, 125 W. Va. 658, 26 S.E.2d 1 (1943).

**Refinancing.** — Section 13-2A-3, authorizing municipalities to refinance "any enterprise," does not warrant the refinancing of three separate bond issues as a single issue, where the original bonds were issued for the purpose of financing three separate flood wall units. City of Huntington v. Heffley, 127 W. Va. 254, 32 S.E.2d 456 (1944).

**Revenue bonds.** — "Revenue bonds" issued by a municipality in conformity with this article are not an indebtedness of the municipality under either W. Va. Const., art. X, § 8, or § 13-1-3. Warden v. City of Grafton, 125 W. Va. 658, 26 S.E.2d 1 (1943).

A provision in a municipal ordinance authorizing the issuance of revenue bonds under this article to aid in the completion of a partly constructed hospital owned by the municipality, to the effect that the municipality shall pay the legally established rates for use of the hospital, does not create an indebtedness against the municipality. Warden v. City of Grafton, 125 W. Va. 658, 26 S.E.2d 1 (1943).

**Validity.** — The validity of bonds, the proceeds of which are to be used toward the completion of a hospital owned by the municipality, under this section, is not impaired or affected by the fact that funds derived from general taxation, or from other sources, also have been, and are to be, used in the construction of the hospital. Warden v. City of Grafton, 125 W. Va. 658, 26 S.E.2d 1 (1943).

**Quoted** in Perdue v. Ferguson, 177 W. Va. 44, 350 S.E.2d 555 (1986).

**Cited** in State ex rel. Charleston Bldg. Comm'n v. Dial, 198 W. Va. 185, 479 S.E.2d 695 (1996).

## § 8-16-3. Special provisions as to certain municipal public works.

When the municipal public works is a motor vehicle parking facility, any municipality involved therein shall have the plenary power and authority, in order to help finance the same, to use any revenue derived from other parking meters or other parking facilities, unless such revenue is otherwise pledged to pay for such other parking meters or other parking facilities.

When the municipal public works is a jail facility used for municipal prisoners, any municipality involved therein shall have the power and authority, in order to help finance the same, to pledge, for a period not to exceed twenty years, the proceeds derived from the imposition of fines and fees.

When the cost of the municipal public works is to be paid by special assessment against the abutting property, represented by assessment certificates which constitute a lien upon such property and said assessment certificates are pledged by any municipality to retire revenue bonds issued and sold to pay the cost thereof, the payor of such assessment certificate shall have the right to pay the same at any time before maturity, together with interest thereon to date of payment, and upon the payment of such assessment certificate the treasurer of such municipality shall deliver to the payor a

release for such lien, and the funds received therefrom shall by said treasurer be deposited in a special fund to be expended only in the payment of such revenue bonds. (1951, c. 137; 1953, c. 134; 1955, c. 122; 1963, c. 123; 1969, c. 86.)

**ALR references.** — Parking places as public improvements which may be established or supported in whole or part by special assessments, 8 ALR2d 392.

Pledging parking meter revenues as unlawful relinquishment of governmental power, 83 ALR2d 649.

**Purpose.** — Section designed to alleviate congested parking conditions. See State ex rel. Bibb v. Chambers, 138 W. Va. 701, 77 S.E.2d 297 (1953).

**Fines.** — Fines generated by a municipal court may not be pledged to retire bonds issued to finance the construction of a municipal building for the reason that municipalities do not have an express or an implied power to do so. Op. Att'y Gen., June 7, 1988, No. 28.

**Legislative intent.** — It was the intent of the legislature to permit municipalities to pledge the resources generated by the imposition of fines and fees for a period of not more than twenty (20) years only for jail facilities used for municipal prisoners. Op. Att'y Gen., June 7, 1988, No. 28.

**Parking meter fees off-street.** — This section should be construed to include the right to pledge revenues derived from on-street parking meters, not otherwise pledged, to help finance proposed off-street parking facilities, including the payment of the principal and interest on the revenue bonds. State ex rel. Bibb v. Chambers, 138 W. Va. 701, 77 S.E.2d 297 (1953).

A system of financing proposed off-street automobile parking facilities, whereby revenue obtained from on-street parking meters, in excess of their cost and maintenance, would be used to pay off the principal and interest of the revenue bonds issued to finance such off-street parking facilities, is not invalid on the ground that it is a revenue as distinguished from a regulatory measure, if the fees charged for parking on both the off-street and on-street facilities are not unreasonable and are not designed to produce revenue in excess of that sufficient to cover cost and maintenance of both facilities. State ex rel. Bibb v. Chambers, 138 W. Va. 701, 77 S.E.2d 297 (1953).

**Renting streets.** — If a city has rented designated portions of the public streets to individuals, in order to obtain revenue for the city, then such rental is unauthorized and unlawful. However, if the rental is employed by the city as manner of regulating on-street parking and the flow of traffic on its municipal streets, then the city is authorized to make such rentals. 46 Op. Att'y Gen. 446 (1956).

**State employees.** — Except where speed and right of way are a necessity or emergency circumstances exist, all state employees must obey municipal traffic regulations and pay parking meter fees and fines. 49 Op. Att'y Gen. 202 (1961).

PART II. CONTROL OF GOVERNING BODY OR BOARD.

## § 8-16-4. Construction, etc., to be under control of governing body or appointed board, etc.

The construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, repair (including replacements), custody, maintenance and operation of any such works, and the collection of revenues therefrom, shall be under the supervision and control of the governing body, or of a committee, by whatever name called, composed of all or a portion of the governing body when only one municipality is involved, or of a board or commission appointed by such governing body when only one municipality is involved or appointed by the governing bodies when two or more municipalities take joint action under the provisions of this article, as may be provided by the governing body or bodies.

When such supervision and control are vested in a committee, board or commission, the governing body or bodies, as the case may be, may provide, by ordinance or ordinances, for said committee, board or commission to exercise

such of the functions of the governing body or bodies in connection with the matter as it or they deem proper, and may provide for said committee, board or commission to receive such compensation as such body or bodies may deem proper, all of which authority and compensation shall be specifically provided for by ordinance or ordinances. Any such committee, board or commission shall consist of the number of members fixed in the ordinance or ordinances creating the same, and the manner and mode of the selection and appointment of the members of any such board or commission shall be stated in such ordinance or ordinances. The members of any such board or commission appointed by the governing body or bodies shall be chosen without regard to their political affiliations, but with regard to their business and professional experience or standing as citizens in the community. All compensation and expenses, including attorney's fees, of such committee, board or commission shall be paid solely from funds provided under the authority of this article. Any such committee, board or commission shall have the power to establish bylaws, rules and regulations for its own government.

When hereinafter used in this article, the term "board" shall be construed to mean the governing body or committee composed of all or a portion of the governing body when only one municipality is involved, or a board or commission appointed by the governing body when only one municipality is involved or appointed by the governing bodies when two or more municipalities take joint action under the provisions of this article, as the case may be. When two or more municipalities take joint action under the provisions of this article each governing body shall appoint to the board the number of members which the governing bodies have agreed shall be appointed by each such governing body.

The governing body or bodies also, in its or their discretion, may provide by ordinance or ordinances for the leasing of a municipal public works and provide for the custody, maintenance and operation thereof by a lessee in accordance with the provisions of such ordinance or ordinances and lease contract executed pursuant thereto: Provided, That the lessee shall pay to the municipality or municipalities for the use and occupancy of such municipal public works so leased an amount sufficient to provide a sinking fund for the payment of the bonds and the interest thereon and all other charges mentioned in section seventeen [§ 8-16-17] of this article. (1935, c. 68, §§ 3, 21; 1937, c. 55; 1961, c. 100; 1969, c. 86.)

**"Committee."** — A national bank may be regarded as a committee under this section. Duling Bros. Co. v. City of Huntington, 120 W. Va. 85, 196 S.E. 552 (1938).

**Exercise of legislative powers.** — Court did not enjoin municipal legislative body from exercising legislative powers in enacting a municipal ordinance involving administration of a floodwall system, concerning the public safety and health, where there was nothing in the petition for the injunction to indicate that enactment or enforcement of the ordinance would cause irreparable injury to the injunction petitioners or that there was no adequate remedy at law. Perdue v. Ferguson, 177 W. Va. 44, 350 S.E.2d 555 (1986).

**Racial restrictions prohibited.** — A municipality may not, by leasing a swimming pool constructed with public funds to a private association of persons, relieve itself of the constitutional obligation to afford colored citizens equal rights with those of white citizens in the use of the public recreational facilities thereby provided. Lawrence v. Hancock, 76 F. Supp. 1004 (D.W. Va. 1948).

**Cited** in State ex rel. Charleston Bldg. Comm'n v. Dial, 198 W. Va. 185, 479 S.E.2d 695 (1996).

## § 8-16-4a. Additional special provisions as to motor vehicle parking facilities.

(a) The legislature hereby finds that the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the streets of many municipalities in this State; that the lack of adequate planning and supervision of the location of parking facilities, the parking of motor vehicles of all kinds and the lack of adequate parking facilities for motor vehicles of all kinds substantially impede the free circulation of traffic in, through and from many municipalities in this State, impede the rapid and effective fighting of fires and disposition of police officers therein, contribute to the location and relocation of commercial and business enterprises outside of urban areas and retard the development of commerce and business within many municipalities in this State, thereby giving rise to urban blight and adversely affecting or threatening to adversely affect the tax base of such municipalities; that such parking crisis can be reduced by such municipalities providing adequate motor vehicle parking facilities strategically located there; that providing properly located terminal space for motor vehicles is a public responsibility; that fostering the development of commerce and business within municipalities, with the increased tax revenues resulting therefrom, is a public purpose; that fostering the availability of property for charitable use is a public purpose; that the closer the proximity between municipally owned motor vehicle parking facilities and commercial and business establishments the greater the development of commerce and business and the greater the level of revenue produced by such motor vehicle parking facilities; that the erection or construction of pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities leading to and from motor vehicle parking facilities so as to facilitate the movement of pedestrians to and from such motor vehicle parking facilities fosters the development of commerce and business and increases the level of revenue produced by such motor vehicle parking facilities; that the leasing, particularly on a long-term basis, and the selling of space for commercial or business use in connection with a municipally owned motor vehicle parking facility will aid the development of commerce and business, increase the level of revenue produced by such motor vehicle parking facility and maintain and increase the tax base of such municipalities; that in many instances the authority for the leasing of space as provided for in this section would assist in financing the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of any such motor vehicle parking facility; that the enactment of this section is for the general welfare of the public and is a public necessity; and that the means and measures authorized in this section are, as a matter of public policy, for the public purposes of such municipalities. This section is enacted in view of these findings and shall be liberally construed in the light thereof.

(b) The governing body or bodies, in its or their discretion, may provide by ordinance or ordinances:

(1) For the leasing by the board as lessor of space in or on a municipal public works which is a motor vehicle parking facility for any business, commercial or

charitable use to such person, for such fair and adequate consideration, for such period or periods of time and upon such other terms and conditions as such body or bodies or the board may agree to. In connection with the leasing of any such space, the board may agree to provide in or on such motor vehicle parking facility such structures, accommodations or improvements as may be necessary for such business, commercial or charitable use or such space may be leased upon condition that the lessee shall provide the same in or on the space so leased.

(2) For the leasing by the board as lessor or the selling of air space over a municipal public works which is a motor vehicle parking facility for any business, commercial or charitable use to such person, for such fair and adequate consideration, for such period or periods of time in the case of a lease and upon such other terms and conditions as such body or bodies or the board may agree to. Any lease or deed of sale of such air space may contain provisions (i) authorizing the use of such areas of the underlying motor vehicle parking facility as are essential for ingress and egress to and from such air space, (ii) relating to the support of any building or other structure to be erected in such air space, and (iii) relating to the connection of essential public or private utilities to any building or other structure in such air space.

(3) For the erection or construction by the board of any pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility leading to and from a municipal public works which is a motor vehicle parking facility; and any such pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility shall, for all purposes of this article, be considered to be a part of a municipal public works which is a motor vehicle parking facility with like effect as if the term "municipal public works" were expressly defined in section one [§ 8-16-1] of this article to include pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities: Provided, That any cost incurred by any municipality or municipalities in erecting or constructing any such pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility which connects a municipal public works which is a motor vehicle parking facility with a privately owned building or buildings or other privately owned structure or structures shall be paid for by the owner or owners of such building or buildings or such other structure or structures.

Any such lease may be privately negotiated without any public notice or advertising, and any such sale may be a public sale pursuant to the provisions of section eighteen [§ 8-12-18], article twelve of this chapter or such sale may be privately negotiated, notwithstanding the provisions of said section eighteen.

(c) The proceeds received from any lease, sale or payment as provided in this section shall be deemed revenue of the works and used as provided in section seventeen [§ 8-16-17] of this article.

(d) Notwithstanding the fact that any motor vehicle parking facility subject to the provisions of this article is municipally owned and the fact that a lease or sale under the provisions of subdivision (1) or subdivision (2), subsection (b) of this section is for a public purpose as declared in subsection (a) of this section, any leasehold interest under said subdivision (1), and any building,

structure, accommodation or improvement erected, made or operated in any air space leased or sold under said subdivision (2) shall be subject to all property taxes, which shall be assessed and imposed against the lessee or grantee, as the case may be, unless the use of such leasehold interest, building, structure, accommodation or improvement is otherwise exempt from property taxation under the provisions of section nine [§ 11-3-9], article three, chapter eleven of this code. (1971, c. 99.)

**Constitutionality.** — This section is not in contravention of W. Va. Const., art. X, §§ 1 and 5 or art. III, §§ 9 and 10 or of the Fourteenth Amendment to the Constitution of the United States. State ex rel. City of Charleston v. Coghill, 156 W. Va. 877, 207 S.E.2d 113 (1973).

Inasmuch as this section has been construed by West Virginia's highest court to restrict private leasing to incidental space, and in view of the availability of adequate means by which the property owner can insist that this test be met prior to condemnation, the section is constitutional. Washington-Summers, Inc. v. City of Charleston, 430 F. Supp. 1013 (S.D. W. Va. 1977).

**Cited** in State ex rel. W. Va. Citizens Action Group v. W. Va. Econ. Dev. Grant Comm., — W. Va. —, 580 S.E.2d 869 (2003).

## § 8-16-4b. Additional special provision as to the use of space in motor vehicle parking facilities.

For all purposes of this article, the power and authority of any municipality to lease, as lessor, space in a motor vehicle parking facility to any person for business, commercial or charitable use shall be deemed to include the power and authority to lease such space to the United States of America, the State of West Virginia, the county court [county commission] of any county of the State of West Virginia, and any agency, board or commission of any thereof, and the revenues derived from such leases may be pledged as security for and expended in payment of revenue bonds of such municipality in like manner and to the same extent as other revenues from such motor vehicle parking facility. (1974, c. 47.)

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

### PART III. GENERAL POWERS AND AUTHORITY.

## § 8-16-5. Powers of board.

The board shall have plenary power and authority to take all steps and proceedings, and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient or incidental to the performance of its duties and the execution of its powers and authority under this article: Provided, That any contract or agreement relating to the financing, or the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, operation or maintenance of any such works, and any trust indenture with respect thereto as hereafter provided for, shall be approved by the governing body or bodies.

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 may direct. All compensation and 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 power or authority herein given it so as to bind said board or any 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 or materials, or both, exceeding in amount the sum of ten thousand dollars shall be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the board to reject any and all bids.

After the construction, reconstruction, establishment, acquisition, renovation or equipment of any such works, the board shall maintain, operate, manage and control the same, and may order and complete any improvements, extensions, enlargements, increase or repair (including replacements) 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 for the use, maintenance and operation of the works, and do all things necessary or expedient for the successful operation thereof, and for stormwater systems and associated stormwater management programs, those activities which include, but are not limited to, stormwater and surface runoff water quality improvement activities necessary to comply with all federal and state requirements. 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 under the authority of this article. (1935, c. 68, § 4; 1969, c. 86; 1998, c. 214; 2001, c. 212.)

## § 8-16-6. Preliminary expenses.

All necessary preliminary expenses actually incurred by the board of any municipality or municipalities in the making of surveys or estimates of cost and of revenues, employment of engineers or other employees, the giving of notices, the taking of options, and all other expenses of whatsoever nature necessary to be paid prior to the issue, sale and delivery of the revenue bonds herein provided for, may be paid by the municipality or municipalities, to be reimbursed and repaid out of the proceeds of the sale of such revenue bonds to be used for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of such works as hereinafter provided. (1935, c. 68, § 5; 1969, c. 86.)

## § 8-16-7. Ordinance for construction, etc., of works.

Before any municipality or municipalities shall, under the provisions of this article, construct, reconstruct, establish, acquire, improve, renovate, extend,

enlarge, increase, equip or repair (including replacements) any municipal public works, the governing body, or the governing body of each participating municipality, shall enact an ordinance or ordinances, which shall (a) set forth a brief and general description of the works, including a reference to the preliminary report or plans and specifications which shall theretofore have been prepared; (b) set forth the estimated cost thereof; (c) order the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of such works; (d) direct that municipal revenue bonds be issued pursuant to this article, in such amount as may be found necessary to pay the cost of the works; (e) contain such provisions as the governing body determines are necessary or desirable with regard to the establishment and setting aside of reserves from the proceeds of such revenue bonds or from the revenues of said works, or from both, and the administration and disposition thereof; and (f) contain such other provisions as may be necessary or proper in the premises. When two or more municipalities take joint action under the provisions of this article, a certified copy of each such ordinance shall be filed in the office of the clerk of the county commission of the county or counties in which the municipalities are located and in the office of the state tax commissioner, and when any such municipality is located in more than one county, the filing for that municipality shall be in the office of the clerk of the county commission in which the major portion of the territory of such municipality is located. Before any such ordinance shall become effective, an abstract of the ordinance, determined by the governing body or each governing body, as the case may be, 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 such municipality or each such municipality, as the case may be. The notice to be published with said abstract of the ordinance shall specify a date, time and place for a public hearing, the date being not less than ten days after the first publication of said abstract and notice and not prior to the last publication of said abstract and notice, at which time and place all parties and interest may appear before the governing body of the municipality or each such municipality and may be heard as to whether or not said ordinance shall be put into effect, and said notice shall also identify the office in which a certified copy of such ordinance shall be on file for review by interested persons during the office hours of such office. At such hearing all objections and suggestions shall be heard and the governing body or each such governing body shall take such action as it or they shall deem proper in the premises: Provided, That if at any such hearing written protest is filed by thirty percent or more of the freeholders of the municipality for which the hearing is held, then the governing body of said municipality shall not take further action unless four fifths of the members of said governing body assent thereto: Provided, however, That in case written protest is filed by thirty percent or more of the freeholders as herein provided, any such governing body shall have authority to appoint a committee to consist of one proponent, one

opponent, and the third to be selected by these two, to determine whether or not thirty percent of the freeholders have in fact protested and said committee shall report its findings to any such governing body. (1935, c. 68, § 6; 1967, c. 105; 1969, c. 86; 1971, c. 193; 1973, c. 89; 1981, 1st Ex. Sess., c. 2.)

**"Estimated cost."** — The provision requiring an ordinance to set forth the estimated cost of the construction of a public work refers to the cost of the proposed work to the municipality, and not to other contributions. Smith v. City of Parkersburg, 125 W. Va. 415, 24 S.E.2d 588 (1943).

**Purpose of ordinance.** — The purpose of the ordinances required by this section is plainly to inform the residents and taxpayers of the municipalities concerned as to the outlay by them, and the expected returns from the special assessment to be laid. Smith v. City of Parkersburg, 125 W. Va. 415, 24 S.E.2d 588 (1943).

**Repeal of ordinance.** — An ordinance providing for the collection of just and reasonable rates or charges for the use or services rendered by a municipal public works in order to pay cost of operating and maintaining such works and, from its net earnings, to meet the interest charges upon, and provide for the retirement of, the outstanding bonds which have been made a direct charge upon the net earnings and capital investment of such works under the provisions of this article, the ordinance providing the only means by which such works can earn money, cannot, while the bonds are outstanding, be repealed. State ex rel. Klostermeyer v. City of Charleston, 130 W. Va. 490, 45 S.E.2d 7 (1947).

**Stated** in City of Fairmont v. Investors Syndicate of Am., Inc., 172 W. Va. 431, 307 S.E.2d 467 (1983); State ex rel. Charleston Bldg. Comm'n v. Dial, 198 W. Va. 185, 479 S.E.2d 695 (1996).

**Cited** in Washington-Summers, Inc. v. City of Charleston, 430 F. Supp. 1013 (S.D. W. Va. 1977).

PART IV. RIGHT OF EMINENT DOMAIN.

## § 8-16-8. Right of eminent domain.

Every such municipality shall have plenary power and authority to condemn any such municipal public works to be acquired, and any land, rights, easements, rights-of-way, franchises and other property, real or personal, deemed necessary, appropriate, useful or convenient for, and incidental to, the construction, reconstruction or establishment of any such works and space for business, commercial or charitable use in connection therewith, or for the improvement, renovation, extension, enlargement, increase or equipment thereof or thereto, and in connection therewith shall have and may exercise all the rights, power, authority and privileges of eminent domain granted to municipalities under the laws relating thereto. Title to property shall be taken in the name of the municipality or jointly in the names of the participating municipalities. Proceedings for such appropriation of property shall be under and pursuant to chapter fifty-four [§§ 54-1-1 et seq.] of this code: Provided, That any such 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 funds provided under the authority of this article; and in any proceedings to condemn, such orders may be made as may be just to any such municipality and to the owners of the property to be condemned; and an understanding or other security may be required securing such owners against any loss or damage which may be sustained by reason of the failure of any such municipality to accept and pay for the property, but such undertaking or security shall impose no liability upon any such municipality, except such as may be paid from the funds provided under the authority of this article.

In the event of acquisition by purchase, the board may obtain and exercise an option from the owners of said property for the purchase thereof, and 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: Provided, however, That the exercise of such option, or the contract for such purchase, or such purchase shall in no event create any obligation of any such municipality, or create any debt, liability or claim, except such as may be discharged or paid from the funds provided under the authority of this article.

In the event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of any ordinance described in section seven [§ 8-16-7] hereof, shall cause to be determined what reconstruction, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) will be necessary, in order that such works and space for business, commercial or charitable use in connection therewith, if any, may be effective for their purpose, and an estimate of the cost thereof shall be included in the estimate of the cost required by section seven hereof, and the same shall be made upon the acquisition of the works and as a part of the cost thereof: Provided further, That no municipality or municipalities shall, under the authority conferred by this article, condemn any existing privately owned works (other than motor vehicle parking facilities) in operation at the date of the condemnation. (1935, c. 68, § 7; 1969, c. 86; 1971, c. 99.)

PART V. REVENUE BOND FINANCING.

## § 8-16-9. Bonds for improvements, etc., of works.

Whenever any municipality or municipalities now, or hereafter, shall own and maintain and operate any of the works herein referred to, whether constructed, reconstructed, established or acquired under the provisions of this article or not, and shall desire to improve, renovate, extend, enlarge, increase, equip or repair (including replacements) the same, it may issue revenue bonds, under the provisions of this article, to pay for the same, and the procedure therefor, including fixing all rates and the computation of the amount thereof, shall be the same as in this article provided for the issuance of bonds for the construction, reconstruction, establishment or acquisition of any such works in or by any such municipality which has not theretofore owned and maintained and operated any such works: Provided, That no existing obligations or rights shall be affected or impaired thereby. (1935, c. 68, § 8; 1969, c. 86.)

**ALR references.** — Validity of municipal bond issue as against owners of property, annexation of which to municipality became effective after date of election at which issue was approved by voters, 10 ALR2d 559.

**Cited** in City of Fairmont v. Investors Syndicate of Am., Inc., 172 W. Va. 431, 307 S.E.2d 467 (1983).

## § 8-16-10. Items of expense included in cost of works.

The cost of the works shall be deemed to include the cost of construction, reconstruction, establishment or acquisition thereof, the cost of all land, rights,

easements, rights-of-way, franchises and other property, real or personal, deemed necessary, appropriate, useful, convenient or incidental therefor or thereto and for the improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) determined upon; the interest upon bonds prior to and during the project and for six months after completion thereof; the amount of any reserve funded from the proceeds of bonds; engineering and legal expenses; expenses 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 expenses; and such other expenses as may be necessary or incident to the financing herein authorized, the project, the placing of the works in operation and the performance of the things herein required or permitted in connection with any thereof. (1935, c. 68, § 9; 1969, c. 86; 1973, c. 89.)

**Stated** in State ex rel. Charleston Bldg. Comm'n v. Dial, 198 W. Va. 185, 479 S.E.2d 695 (1996).

## § 8-16-11. No municipality is to incur any obligation not payable from proceeds of bonds; exemption from taxation.

Nothing in this article contained shall be so construed as to authorize or permit any municipality or municipalities to make any contract or incur any obligation of any kind or nature, except such as shall be discharged or payable solely from the funds provided under the authority of this article. Funds for the payment of the entire cost of the works shall be provided by the issuance of revenue bonds of the municipality or municipalities, the principal and interest of which bonds shall be payable solely from the special fund for such payment herein provided for, and said bonds shall not in any respect be a corporate indebtedness of such municipality or municipalities. All such bonds and the interest thereon, and all properties and revenues and income derived from such municipal public works, shall be exempt from all taxation by this State, or any county, municipality, political subdivision or agency thereof. All of the details of such bonds and the issuance thereof shall be determined by ordinance of the governing body or bodies. (1935, c. 68, § 10; 1969, c. 86.)

**W. Va. Law Review.** — For note, "Municipal Bonds — The Need for Disclosure," see 78 W. Va. L. Rev. 391 (1976).

**Transfer of funds.** — This section does not preclude a municipality from transferring funds for the purpose of servicing debt, where the transfer does not obligate the municipality in any way, the principal and interest of the revenue bonds remaining payable only from a fund made up of parking fees. Op. Att'y Gen., Aug. 31, 1979, No. 27.

This section prevents a bondholder from expecting payment from any source save the fund set up for the purpose, but does not prevent a city from gratuitously transferring funds for the purpose of servicing revenue bonds provided that the city is not obligated to do so. Op. Att'y Gen., Aug. 31, 1979, No. 27.

Neither the "self supporting" provision of § 8-16-1 nor the "no obligation" provision of this section prevents a municipality from transferring funds to a public works authority to service revenue bonds. Op. Att'y Gen., Aug. 31, 1979, No. 27.

**Quoted** in State ex rel. Charleston Bldg. Comm'n v. Dial, 198 W. Va. 185, 479 S.E.2d 695 (1996).

## § 8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates.

Such revenue bonds shall bear interest at not more than twelve percent per annum, payable semiannually, or at shorter intervals, and shall mature at such time or times, not exceeding forty years, as may be determined by the ordinance or ordinances authorizing the issuance of such bonds. Such bonds may be made redeemable before maturity, at the option of the municipality or municipalities issuing the same, to be exercised by said board, at not more than the par value thereof, and at a premium of not more than five percent, under such terms and conditions as may be fixed by the ordinance or ordinances authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Such ordinance or ordinances shall determine the form of the bonds, either coupon or registered, shall set forth any registration or conversion privileges, and shall fix the denomination or denominations of such bonds, and the place or places of the payment of the principal and interest thereof, which may be at any banking institution or trust company within or without the State. When two or more municipalities take joint action under the provisions of this article, the bonds shall be issued by the participating municipalities either as separate or joint bonds, as the governing bodies thereof may agree, and when separate bonds are issued, the amount of the bonds to be issued by each participating municipality shall be fixed by agreement of the governing bodies of the participating municipalities set forth in the ordinance of each participating municipality authorizing the issuance of such bonds. The bonds shall contain a statement on their face that the municipality or municipalities issuing the same shall not be obligated to pay the same, or the interest thereon, except from the special fund derived from the net revenue of the works, or the pro rata part thereof, as provided for in section eleven [§ 8-16-11] hereof. 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 this State. The bonds shall be executed in such manner as the governing body or bodies may direct. The bonds shall be sold by the governing body or bodies in such manner as may be determined to be for the best interest of the municipality or municipalities: Provided, That said bonds shall not be negotiated at a price lower than a price which when computed to maturity upon standard tables of bond values will show a net return of more than thirteen percent per annum to the purchaser upon the amount paid therefor. Any surplus of the bond proceeds over and above the cost of the project shall be paid into the sinking fund hereinafter provided for. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the ordinance or ordinances authorizing the issuance of the bonds first issued, or in the trust indenture

hereinafter authorized, shall be deemed to be of same issue, and shall be entitled to payment without preference or priority of the bonds first issued; and if any preference or priority of the bonds first issued is provided for in the ordinance or ordinances authorizing the issuance of the bonds first issued or in said trust indenture, such preference or priority shall not extend to an amount exceeding ten percent of the original issue. Prior to the preparation of the definitive bonds, interim certificates may, under like restrictions, be issued, exchangeable for definitive bonds upon the issuance of the latter. (1935, c. 68, § 11; 1969, c. 86; 1970, c. 7; 1980, c. 33; 1981, 1st Ex. Sess., c. 2.)

**Editor's notes.** — The Uniform Commercial Code is codified as §§ 46-1-101 et seq.

**Early redemption.** — A city has no authority to establish a scheme requiring early redemption, thereby eliminating its option either to call bonds early or not to do so. City of Fairmont v. Investors Syndicate of Am., Inc., 172 W. Va. 431, 307 S.E.2d 467 (1983).

## § 8-16-13. Obligations not to bind municipal official or officer or member of board personally.

No municipal official or officer or member of the board shall in any event be personally liable upon any contract or obligation of any kind or character executed under the authority herein contained, even if said undertaking should thereafter be held ultra vires. (1935, c. 68, § 12; 1969, c. 86.)

## § 8-16-14. Additional bonds for improvements, etc., of works.

The governing body or bodies may provide by the said ordinance or ordinances 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 or ordinances, or trust indenture, or all of these, for the purpose of improving, renovating, extending, enlarging, increasing, equipping or repairing (including replacements) the works when deemed necessary in the public interest, such additional bonds to be secured, and be payable from the revenues of the works, as provided for in section nine [§ 8-16-9] of this article. (1935, c. 68, § 13; 1969, c. 86.)

## § 8-16-15. How proceeds of bonds applied.

All moneys received from the sale of any bonds issued under the authority of this article, after reimbursements and repayments to said municipality or municipalities of all amounts advanced for preliminary expenses, as provided in section six [§ 8-16-6] of this article, shall be applied solely to the payment of the cost of the project, or to the appurtenant sinking fund, and there shall be, and there is hereby, 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. (1935, c. 68, § 14; 1969, c. 86.)

## § 8-16-16. Bonds secured by trust indenture between municipality or municipalities and corporate trustee.

In the discretion and at the option of the governing body or bodies such bonds may be secured by a trust indenture by and between such municipality or municipalities and a corporate trustee, which may be a trust company or banking institution having powers of a trust company within or without the State. The ordinance or ordinances authorizing the issuance of 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 bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality or municipalities and the board in relation to the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase and equipment of the project and the repair (including replacements), maintenance, operation and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the project shall be contracted for, carried out and paid for, under the supervision and approval of the consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees 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, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders or such trustee, or both. Except as in this article otherwise provided, the governing body or bodies may provide by ordinance or ordinances 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 such body or bodies may determine for the custody thereof, and for the method of distribution thereof, with such safeguards and restrictions as such body or bodies may determine. (1935, c. 68, § 15; 1969, c. 86.)

## § 8-16-17. Sinking fund; sinking fund commission; transfer of funds; purchase of outstanding bonds.

Before the issuance of any such bonds, the governing body or bodies shall, by ordinance or ordinances, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banking institutions or trust companies for making payment of such bonds and interest, out of the net revenues of said works, 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 expenses of repair (including replacements), maintenance and operation, such amount to be paid by the board into the sinking fund at intervals, to be determined by ordinance or ordinances adopted prior to the 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 sufficient for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as herein provided, which margin, together with unused surplus of such margin carried forward from the preceding year and the amounts set aside as reserved out of the proceeds from the sale of the bonds, or from the revenues of said works, or from both, 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 revenues of the works. Prior to the issuance of the bonds, the board may, by ordinance or ordinances, be given the right to use or direct the trustee or the state sinking fund commission to use such sinking fund, or any part thereof, in the purchase of any of the outstanding bonds payable therefrom, at the market prices 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 the sinking fund as herein required and after reserving an amount deemed by the board sufficient for repair (including replacements), maintenance and operation for an ensuing period of not less than twelve months and for depreciation, the board may at any time in its discretion transfer all or any part of the balance of the net revenues into the sinking fund or into a fund for improvement, renovation, extension, enlargement, increase or equipment for or to the works, or the governing body or bodies may, notwithstanding the provisions of section twenty [§ 8-13-20], article thirteen of this chapter, transfer all or any part of the balance of the net revenues to the general or any special fund of the municipality or municipalities and use such revenues for any purpose for which such general or special fund may be expended.

All amounts for the sinking fund and interest, as and when set apart for the payment of same, shall be remitted to the state sinking fund commission at such periods as shall be designated in the ordinance or ordinances, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and the ordinance or ordinances pursuant to which such bonds have been issued. The state sinking fund commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any ordinance or ordinances passed or adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law. (1935, c. 68, § 16; 1969, c. 86; 1971, c. 99; 1973, c. 89.)

**Applied** in State ex rel. City of Charleston v. Hutchinson, 154 W. Va. 585, 176 S.E.2d 691 (1970).

PART VI. IMPOSITION OF RATES OR CHARGES.

## § 8-16-18. Rates, fees or charges for services rendered by works.

The governing body shall have plenary power and authority and it shall be its duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use and services rendered, or the improvement or protection of property, not to include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways, provided or afforded, by such works, to be paid by the person using the same, receiving the services thereof, or owning the property improved or protected thereby, and may readjust rates, fees or charges from time to time.

When two or more municipalities take joint action under the provisions of this article, the rates, fees or charges shall be established by each participating municipality, with the concurrence of the other participating municipality or municipalities as to the amount of the rates, fees or charges, and such rates, fees or charges may be the same with respect to each municipality, or they may be different.

Rates, fees or charges heretofore or hereafter established and maintained for the improvement or protection of property, not to include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways, provided or afforded by a municipal flood control system or flood walls, to be paid by the person owning the property improved or protected thereby, shall be collectible and enforceable from the time provided in any such ordinance, any provision of this or any other law to the contrary notwithstanding, if, at such time, such works, though not yet fully completed, are nearing completion and the governing body is reasonably assured that the works will be completed and placed in operation without unreasonable delay.

All rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of repair (including replacements), maintenance and operation of the works, and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to the provisions of this section are 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 the 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 proposed ordinance fixing the rates, fees or charges and before the same is finally adopted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publishing the same as a Class I-0 legal advertisement in compliance with the provisions of article three [§§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for the publication shall be such municipality or each such municipality, as the case may be. Said notice shall be published at least five

days before the date fixed in such notice for the hearing, which hearing may be adjourned from time to time. No other or further notice to parties in interest shall be required.

After such hearing the ordinance establishing rates, fees or charges, either as originally proposed or introduced, or as modified and amended, shall be adopted 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 such works, and also in the office of the governing body or bodies, and shall be open to inspection by all parties in interest.

The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional class of users or property thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or adjustment of rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as provided in this section. The aggregate of the rates, fees or charges shall always be sufficient for the expenses of repair (including replacements), maintenance and operation, and for the sinking fund payments.

If any rate, fee or charge so established shall not be paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent and reasonable attorney's fees, may be recovered by the board in a civil action in the name of the municipality or municipalities, and in the case of rates, fees or charges due for services rendered, such rates, fees or charges, if not paid when due, may, if the governing body so provide in the ordinance provided for under section seven [§ 8-16-7] of this article, constitute a lien upon the premises served by such works, which lien may be foreclosed against such lot, parcel of land or building so served, in accordance with the laws relating to the foreclosure of liens on real property. Upon failure of any person receiving any such service to pay for the same when due, the board may discontinue such service without notice. (1935, c. 68, § 17; 1949, c. 85; 1967, c. 105; 1969, c. 86; 2001, c. 212.)

**"Charges."** — The word "charges" as used in this section includes a special assessment against real estate. City of Moundsville v. Brown, 125 W. Va. 779, 25 S.E.2d 900 (1943), modified, 127 W. Va. 602, 34 S.E.2d 321 (1945).

**Collection of assessments.** — Assessments made by a municipality against the owner of land abutting on a street paved or repaved as a municipal public works project may be collected by an action or suit in the name of the municipality. And this is true even though such land is held by trustees. City of Moundsville v. Brown, 127 W. Va. 602, 34 S.E.2d 321 (1945).

**Repeal of ordinance.** — An ordinance providing for the collection of just and reasonable rates or charges for the use or services rendered by a municipal public works in order to pay cost of operating and maintaining such works and, from its net earnings, to meet the interest charges upon, and provide for the retirement of, the outstanding bonds which have been made a direct charge upon the net earnings and capital investment of such works under the provisions of this article, the ordinance providing the only means by which such works can earn money, cannot, while the bonds are outstanding, be repealed. State ex rel. Klostermeyer v. City of Charleston, 130 W. Va. 490, 45 S.E.2d 7 (1947).

**Cited** in Perdue v. Ferguson, 177 W. Va. 44, 350 S.E.2d 555 (1986).

## § 8-16-18a. Pledge of the hotel occupancy tax; contribution of revenues to building commission.

In addition to the rates or charges authorized to be pledged and expended for the security and payment of bonds as provided in this article, the governing body issuing such bonds shall have plenary power and authority to pledge and expend for the security and payment of such bonds all, or any part, of the revenues which are derived from the hotel occupancy tax which a municipality may impose pursuant to section three [§ 8-13-3], article thirteen of this chapter and which are specifically dedicated by such governing body for any purpose or purposes set forth in section three, article thirteen of this chapter. All such sums which are so pledged shall be deemed "revenues of the works" for all purposes of the provisions of this article. The governing body shall also have the power and authority to contribute all, or any part of, the revenues derived from said hotel occupancy tax to a building commission created by such governing body pursuant to article thirty-three [§§ 8-33-1 et seq.], chapter eight of this code for such lawful purposes which such building commission shall determine and which are set forth in section three, article thirteen of this chapter, including payment of revenue bonds issued by such building commission. (1976, c. 82.)

## § 8-16-19. Appeal to public service commission from rates fixed.

If any party in interest is dissatisfied with the rates fixed under the provisions of the immediately preceding section [§ 8-16-18] of this article, such party shall have the right to appeal to the public service commission at any time within thirty days after the fixing of such rates by the governing body, but the rates so fixed by the governing body shall remain in full force and effect, until set aside, altered or amended by the public service commission. (1935, c. 68, § 18; 1969, c. 86.)

**Editor's notes.** — The language referring to "the immediately preceding section" was rendered obsolete by the addition of § 8-16-18a. The reference is presumably intended to be to § 8-16-18.

**Special assessments.** — Even if this section applies to special assessments (which the court did not concede) it cannot be extended, because such extension is expressly excluded by § 8-16-26. Duling Bros. Co. v. City of Huntington, 120 W. Va. 85, 196 S.E. 552 (1938).

### Part VII. Accounting System and Records.

## § 8-16-20. Accounting system; yearly audit; custodian of funds.

Any municipality or municipalities issuing revenue bonds under the provisions of this article shall install and maintain a proper system of accounting, showing the amount of revenues received and the application of the same, and the governing body or bodies shall, at least once a year, cause such accounts to be properly audited by a competent auditor, and the report of such auditor

shall be open for inspection at all proper times to any taxpayer or resident of said municipality or municipalities, or person receiving service from said works, or any holder of bonds issued under the provisions of this article, or anyone acting for in behalf of such taxpayer, resident, person or bondholder. The treasurer of such municipality or each such municipality, or other official or institution specifically charged with the duty, shall be the custodian or custodians of the funds derived from income received from said works, and shall give proper bond or bonds for the faithful discharge of his or its or their duties as such custodian or custodians, which bond or bonds shall be fixed and approved by the governing body or bodies. All of the funds received as income from said works under the provisions of this article and all funds received from the sale of revenue bonds issued therefor shall be kept separate and apart from other funds of the municipality or municipalities, and separate accounts shall be maintained for the several items required to be set up by the provisions of section seventeen [§ 8-16-17] of this article. (1935, c. 68, § 19; 1969, c. 86.)

**Applied** in State ex rel. City of Charleston v. Hutchinson, 154 W. Va. 585, 176 S.E.2d 691 (1970).

**Stated** in City of Fairmont v. Investors Syndicate of Am., Inc., 172 W. Va. 431, 307 S.E.2d 467 (1983).

PART VIII. RATES OR CHARGES FOR MUNICIPALITIES.

## § 8-16-21. Governmental entities to pay established rates, fees or charges for services rendered to it or them.

(a) The municipality or municipalities issuing such bonds shall be subject to the same rates, fees or charges established as provided in this article, or to rates, fees or charges established in harmony therewith, for service rendered to the municipality or municipalities 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 defined in this article, and may be applied as provided in this article, for the application of such revenue.

(b) The municipality or municipalities and any county, state and federal government served by the services of the stormwater system shall be subject to the same rates, fees or charges established as provided in this article for stormwater services, or to rates, fees or charges established in harmony therewith, for service rendered to the governmental entity and shall pay such rates, fees or charges, when due, from corporate funds, and the same is considered to be a part of the revenues of the works as defined in this article, and may be applied as provided in this article, for the application of such revenue. 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 without the express agreement of the commissioner of highways. (1935, c. 68, § 20; 1969, c. 86; 2001, c. 212.)

PART IX. LIENS AND PROTECTION OF BONDHOLDERS.

## § 8-16-22. Statutory mortgage lien upon works created.

There shall be and there is hereby created and granted a statutory mortgage lien upon such municipal public works constructed, reconstructed, established, acquired, improved, renovated, extended, enlarged, increased, equipped or repaired (including replacements) under the provisions of this article, which shall exist in favor of the holder of said bonds, and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such municipal public works shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds. (1935, c. 68, § 22; 1969, c. 86.)

**Ordinance held valid.** — A provision in an ordinance, authorizing the issuance of a series of revenue bonds under this article for the completion of a hospital building owned by the city, which bonds are made a "statutory mortgage lien" on the hospital when completed and on the equipment and future additions thereto, and which provision pledges all of the net profits therefrom for the payment of the bonds and interest thereon, is valid under the provisions of this section. Warden v. City of Grafton, 125 W. Va. 658, 26 S.E.2d 1 (1943).

## § 8-16-23. Acquisition of property on which lien exists.

No property shall be acquired under the provisions of 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. (1935, c. 68, § 23; 1969, c. 86.)

## § 8-16-24. Protection and enforcement of rights of bondholders, etc.; receivership; effect of receivership on lease agreement.

Any holder of any such bonds, or any of the coupons attached thereto, and the trustee, if any, except to the extent that the rights herein given may be restricted by the ordinance authorizing the issuance of the bonds or by the trust indenture, may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section twenty-two [§ 8-16-22] of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance or trust indenture to be performed by the municipality or municipalities, or by the board or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the works. If there be default in the payment of the principal of or interest upon any of the bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer the works on behalf of the municipality or municipalities, and the bondholders or trustee, or both, except as so restricted, with power to charge and collect rates or charges sufficient to provide for the payment of the expenses of repair (including replacements), maintenance and operation, and also to pay any bonds and

interest outstanding, and to apply the income or other revenue in conformity with this article, and the said ordinance or trust indenture, or both, and the power herein provided for the appointment of a receiver and the administration by the court of the works on behalf of the municipality or municipalities, and the bondholders or trustee, or both, shall apply to cases where such works are operated by a lessee of the municipality or municipalities as well as to cases where works are operated by the municipality or municipalities. In case a receiver is appointed for works operated by a lessee of a municipality or municipalities, the lease agreement then existing between the municipality or municipalities and the lessee ipso facto thereby shall be terminated and all property, equipment, bills receivable and assets of every kind, used in connection with the operation of such works, shall pass to the receiver and upon the termination of such receivership, such works, equipment, property, bills receivable and assets of every kind then in the hands of the receiver thereupon shall pass to the municipality or municipalities. (1935, c. 68, § 24; 1937, c. 55; 1969, c. 86.)

**Rules of Civil Procedure.** — As to receivers, see Rule 66.

**Mandamus.** — Under the provisions of this section, mandamus is a proper remedy to be pursued by the holder of a municipal revenue bond to enforce the performance of the duties imposed upon the city by this article, the duties of the city council in discharging such obligations being administrative and not legislative. State ex rel. Klostermeyer v. City of Charleston, 130 W. Va. 490, 45 S.E.2d 7 (1947).

A default in the payment of interest charges or principal of bonds issued under this article is not first required before mandamus lies under this section to compel performance of duties imposed upon city issuing such bonds. State ex rel. Klostermeyer v. City of Charleston, 130 W. Va. 490, 45 S.E.2d 7 (1947).

PART X. CONSTRUCTION; EXTRATERRITORIAL JURISDICTION.

## § 8-16-25. Article confers additional power and authority; extraterritorial jurisdiction.

The power and authority herein granted shall be in addition to and not in derogation of any power and authority vested in any municipality under any constitutional, statutory or charter provisions which may now or hereafter be in effect. For all purposes of this article, municipalities shall have jurisdiction for ten miles outside of the corporate limits thereof, except where such zone would overlap with the zone of another municipality, in which event the meridian line of the overlapping zone shall be the dividing line of their respective jurisdictions, except that one municipality shall have jurisdiction within such ten-mile zone and may overlap into the zone of another municipality or municipalities with the consent thereof. (1935, c. 68, § 25; 1949, c. 86; 1969, c. 86.)

**Construction.** — This section clearly means that no part of this article shall operate to limit, restrict, modify or repeal any authority which a municipality had from any other source. Warden v. City of Grafton, 125 W. Va. 658, 26 S.E.2d 1 (1943).

## § 8-16-26. Construction of power and authority conferred.

This article shall, without reference to any other statute or charter provision, be deemed full authority for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, repair (including replacements), maintenance and operation 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 alternative method therefor, and for the financing thereof, and no petition or other or further proceeding in respect to any such project, or to the issuance or sale of bonds under this article, and no publication of any ordinance, notice or proceeding relating to any such project, or to the issuance or sale of such bonds shall be required, except such as are prescribed in this article, any provisions of other statutes of the State to the contrary notwithstanding. (1935, c. 68, § 26; 1969, c. 86.)

## § 8-16-27. Article liberally construed.

This article being necessary for the public health, safety and welfare shall be liberally construed to effectuate the purposes thereof. (1935, c. 68, § 27; 1969, c. 86.)

**Legislative intent.** — It is evident that the legislature, in enacting this chapter as a measure to promote public health, safety and welfare, intended it to have broad scope and wide application to public improvements beneficial to the public health, safety and welfare of municipalities in all sections of the State. State ex rel. Holbert v. Robinson, 134 W. Va. 524, 59 S.E.2d 884 (1950). See also State ex rel. Bibb v. Chambers, 138 W. Va. 701, 77 S.E.2d 297 (1953).

## § 8-16-28. Reference to "municipal authorities" or "municipal authority" elsewhere in law to mean "governing body" for the purposes of this article only.

In elaboration of the provisions of section eight [§ 8-1-8], article one of this chapter, wherever in this code, in any act, in general law, elsewhere in law, in any charter, in any ordinance, resolution or order, or in any ordinance, resolution or order of a county court [county commission], reference is made to the term "municipal authorities" or "municipal authority" within the meaning of the provisions of former article four-a of this chapter, such reference shall henceforth be read, construed and understood to mean "governing body" as that term is used in this article sixteen [§§ 8-16-1 et seq.] only. (1969, c. 86.)

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

**W. Va. Law Review.** — Dobbs and Joslin, Bankruptcy Preference Concerns in Industrial Development Bond Financing, 84 W. Va. L. Rev. 573 (1982).

# State of West Virginia

# Certificate

*I, Betty Ireland, Secretary of State of the State of West Virginia, hereby certify that*

**THIS IS A TRUE COPY OF CHAPTER 13, ARTICLE 2E OF THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.**

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

March 29, 2005

*Secretary of State*

# ARTICLE 2E.

# REVENUE BOND REFUNDING ACT.


| Sec. | | Sec. | |
|---|---|---|---|
| 13-2E-1. | How article cited. | 13-2E-9. | Call of revenue bonds for redemption. |
| 13-2E-2. | Definitions. | | |
| 13-2E-3. | Authority to refund. | 13-2E-10. | Security provisions. |
| 13-2E-4. | Terms, form and execution of refunding bonds. | 13-2E-11. | Bonds payable solely from revenues of enterprise. |
| 13-2E-5. | Issuance of refunding bonds; application of proceeds. | 13-2E-12. | Tax exemption; exceptions. |
| | | 13-2E-13. | Validity of bonds. |
| 13-2E-6. | Determination of governing body to be conclusive. | 13-2E-14. | Article complete authority for refunding bonds; effect on other laws; liberal construction. |
| 13-2E-7. | Authorization for issuance. | | |
| 13-2E-8. | Authority for escrow agreement. | 13-2E-15. | Severability. |


## § 13-2E-1. How article cited.

This article may be cited as "Revenue Bond Refunding Act." (1969, c. 12.)

## § 13-2E-2. Definitions.

The following terms or words, wherever used or referred to in this article, shall have the following meaning, unless a different meaning plainly appears from the context:

The term "public body" means any city, town, village, county, public service district, sanitary district, political subdivision or any other similar public entity now or hereafter created, and the state of West Virginia acting through any of its agencies, boards, commissions or departments, having power to issue revenue bonds.

The term "governing body" means a board, council or other body having power to borrow money on behalf of a public body.

The term "law" means any act or statutes, general, special or local, of this state, including, without being limited to, the charter of any public body.

The term "enterprise" means any work, undertaking, or project which the public body is or may hereafter be authorized to acquire or construct and from which the public body has heretofore derived or may hereafter derive revenues, for the refinancing of which enterprise refunding bonds are issued under this article, and such enterprise shall include all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto; and for the purposes of this article "enterprise" includes the waterworks system or the sewerage system, or both said systems, resulting from the severance of a combined waterworks and sewerage system pursuant to section one-b [§ 8-20-1b] article twenty, chapter eight of this code, all as the governing body shall authorize in the ordinance authorizing said severance.

The term "revenues" means all fees, tolls, rates, rentals and charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the public body from the operation of any enterprise or arising from any enterprise, and including earnings derived from investments and bank deposits.

The term "revenue bonds" means notes, bonds, certificates or other obligations of a public body heretofore or hereafter issued and outstanding under any law and which by their terms are payable from the revenues derived by such public body from the operation of an enterprise.

The term "refunding bonds" means notes, bonds, certificates or other obligations of a public body issued pursuant to this article.

The term "holder of bonds" or "bondholder" or any similar term means any person who shall be the bearer of any outstanding refunding bond or refunding bonds registered to bearer or not registered, or the registered owner of any such outstanding refunding bond or refunding bonds which shall at the time be registered other than to bearer.

The words "net interest cost" when referring to an outstanding issue of revenue bonds to be refunded, means the total amount of interest which would accrue on such revenue bonds from the date of the refunding bonds to the respective maturity dates of the outstanding revenue bonds to be refunded, without regard to any retained options of redemption.

The words "net interest cost" when referring to a proposed issue of refunding bonds, means the total amount of interest to accrue on the refunding bonds from their date to their respective maturities, without regard to any retained options of redemption, plus the amount of any discount below par or less the amount of any premium above par at which the bonds may be sold.

The words "net effective interest rate" when referring to a proposed issue of refunding bonds, means the net interest cost of said refunding bonds divided by the product obtained by multiplying the aggregate principal amount of such refunding bonds maturing on each maturity date by the number of years from the date of the refunding bonds to their respective maturities, without regard to any retained options of redemption.

The term "certified public accountant" means an independent certified public accountant or firm of certified public accountants licensed to practice in this state.

Words importing the singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations. (1969, c. 12; 1986, c. 118.)

## § 13-2E-3. Authority to refund.

Any public body may issue refunding bonds for the purpose of refunding all or any part of its revenue bonds now or hereafter outstanding, whether or not such revenue bonds are at the time of the refunding due or optional for redemption, under the circumstances and restrictions set forth in this article. Refunding bonds shall be payable from revenues derived from the same enterprise as the revenue bonds to be refunded except where the public body has outstanding revenue bonds payable from the revenues of an enterprise and is authorized under any other law to combine and consolidate such enterprise with another enterprise and issue revenue bonds payable from the revenues of the combined and consolidated enterprises. An issue of refunding bonds may refund part or all of one or more issues of outstanding revenue bonds:

Provided, That part or all of two or more issues of outstanding revenue bonds may not be refunded under this article unless either (a) all of the issues of outstanding revenue bonds to be refunded are payable from revenues derived from the same enterprise, or (b) the public body is authorized under any other law to combine or consolidate the enterprises in question and issue revenue bonds payable from the revenues of the combined or consolidated enterprises.

Refunding bonds may be issued hereunder whenever the governing body of the public body deems it expedient and, notwithstanding any provision in this article to the contrary, may be issued as part of a series of revenue bonds issued for the purpose, in addition to such refunding, of financing the acquisition or construction of improvements, betterments, extensions or replacements to the particular enterprise, as provided by other articles of this Code. (1969, c. 12; 1981, 1st Ex. Sess., c. 2.)

## § 13-2E-4. Terms, form and execution of refunding bonds.

Refunding bonds authorized under this article may be issued in one or more series; may bear such date or dates; may mature at such time or times, not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, not exceeding forty years from their respective dates; may bear interest at such rate or rates; may be in such denomination or denominations; may be in such form either coupon or registered; may carry such registration and conversion privileges; may be executed in such manner; may be payable in such medium of payment, at such place or places; may be subject to such terms of redemption, with or without a premium; may be declared or become due before the maturity date; may provide for the replacement of mutilated, destroyed, stolen or lost bonds; may be authenticated in such manner and upon compliance with such conditions; and may contain such other terms and covenants, as may be determined by the governing body in the proceedings authorizing the refunding bonds. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes. (1969, c. 12; 1981, 1st Ex. Sess., c. 2.)

## § 13-2E-5. Issuance of refunding bonds; application of proceeds.

Refunding bonds issued under this article may be exchanged for not less than a like principal amount of the revenue bonds to be refunded, or may be sold at public or private sale, or may be exchanged in part and sold in part, in such manner and upon such terms as may be determined by the governing body to be for the best interests of the public body: Provided, That such refunding bonds shall not be sold or exchanged at a price lower than a price which will show a net saving to the issuer after deducting all expenses of the refunding: Provided, however, That if the governing body determines that one of the purposes of issuing such refunding bonds is to effect the release, termination or modification of liens, restrictions, conditions or limitations

imposed in connection with the bonds which are to be refunded, then such refunding bonds may be issued without the necessity of showing a net saving to the issuer, in which event such refunding bonds shall bear interest at such rate or rates as the governing body may determine, but such rate or rates shall not exceed the maximum stated rate of interest which the revenue bonds to be refunded thereby could bear if they were being issued as of the date of issuance of such refunding bonds, and such refunding bonds may not be sold or exchanged at a price which would result in a net interest cost in excess of the maximum net interest cost which the revenue bonds to be refunded could be sold or exchanged for if they were being issued as of the date of issuance of such refunding bonds.

If any such refunding bonds are to be sold, they may be issued in such principal amount as may be determined advisable by the governing body including, without limitation, the aggregate principal amount of the revenue bonds to be refunded, interest accrued and to accrue to the date or dates on which the revenue bonds being refunded are scheduled to mature or to be redeemed prior to maturity, any redemption premiums which must be paid in order to refund such outstanding revenue bonds and any costs and expenses of issuing the refunding bonds and providing for retirement of revenue bonds to be refunded. If sold, the net proceeds shall either be immediately applied to the payment or redemption and retirement of the revenue bonds to be refunded, or the net proceeds of the refunding bonds may be invested at the discretion and under the supervision of the escrow agent in whole, or in part, (a) in direct obligations issued by the United States of America or one of its agencies, (b) in obligations unconditionally guaranteed by the United States of America as to principal and interest, or (c) in certificates of deposit of a banking corporation or association which is a member of the federal deposit insurance corporation, or successor; but any such certificates of deposit must be fully secured as to both principal and interest by pledged collateral consisting of direct obligations of or obligations guaranteed by the United States of America having a market value, excluding accrued interest, at all times at least equal to the amount of the principal of an accrued interest on such certificates of deposit. Any such investments must mature, or be payable in advance of maturity at the option of the holder, and must bear interest in such manner as to provide funds which, together with uninvested money placed in the hereinafter mentioned escrow, will be sufficient to pay when due or called for redemption the revenue bonds refunded, together with interest accrued and to accrue thereon and redemption premiums, if any, and such refunding bond proceeds or obligations so purchased therewith shall, and with other funds legally available to the public body for such purpose may, be deposited in escrow with the West Virginia municipal bond commission or a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia, to be selected by the issuer to be held in trust for the payment and redemption of the revenue bonds refunded, and such money and obligations and any reinvestment thereof shall be held in trust by such escrow agent for the payment of interest on the refunded bonds when due, and principal thereof and applicable redemption premiums, if any, when due, or upon the

date or dates for which they shall have been called for redemption, or upon an earlier voluntary surrender at the option of the escrow agent; provided if interest earned by any investment in such escrow is shown to be in excess of the amounts required from time to time for the payment of interest on and principal of the refunded revenue bonds, including applicable redemption premium, then such excess may be withdrawn from escrow and disbursed by the public body as are other revenues of the enterprise. Any moneys in the sinking or reserve funds or other funds maintained for the outstanding revenue bonds to be refunded may be applied in the same manner and for the same purpose as are the net proceeds of refunding bonds or may be deposited in the special fund or any reserve funds established for account of the refunding bonds. The term "net proceeds" as used above shall mean the gross proceeds of the refunding bonds after the deduction therefrom of all accrued interest, costs and expenses incurred in connection with the authorization and issuance of the refunding bonds and the retirement of the outstanding revenue bonds, and including all costs and expenses resulting from price variations to par or otherwise incurred in the purchase of obligations for escrow and in the disposition of the refunding bonds. (1969, c. 12; 1973, c. 115; 1986, c. 118.)

## § 13-2E-6. Determination of governing body to be conclusive.

The determination by the governing body of any public body issuing refunding bonds under this article that the limitations herein imposed upon the issuance of refunding bonds have been met, shall be conclusive: Provided, however, That such public body shall have obtained from an independent certified public accountant a certification that the amount of saving stated to be achieved by the refunding shall in fact be served, based upon his review, comparison and analysis of the net interest cost in dollars of the refunding bonds and the net interest cost in dollars of the bonds to be refunded. (1969, c. 12.)

## § 13-2E-7. Authorization for issuance.

Refunding bonds and all acts required to be authorized hereunder shall be authorized in the manner in which the bonds to be refunded were authorized and issued: Provided, That refunding bonds of a system resulting from the severance of a combined municipal waterworks and sewerage system shall to the extent applicable be authorized and issued under the terms and provisions of law, including, but not limited to, interest rates and net interest costs, under which revenue bonds of such resulting system would be authorized and issued. (1969, c. 12; 1986, c. 118.)

## § 13-2E-8. Authority for escrow agreement.

The governing body of any public body shall have power to enter into such escrow agreements and to insert therein such protective and other covenants and provisions as it may consider necessary to permit the carrying out of the provisions of this article and to insure the prompt payment of principal of and

interest and redemption premiums on the revenue bonds refunded. (1969, c. 12.)

## § 13-2E-9. Call of revenue bonds for redemption.

Where any revenue bonds to be refunded are not to be surrendered for exchange or payment and are not to be paid at maturity with escrowed obligations, but are to be paid from such source prior to maturity pursuant to call for redemption exercised under a right of redemption reserved in such revenue bonds, the governing body of the public body shall, prior to the issuance of the refunding bonds, determine which redemption date or dates shall be used, call such revenue bonds for redemption and provide for the giving of the notice of redemption required by the proceedings authorizing such revenue bonds. Where such notice is to be given at a time subsequent to the issuance of the refunding bonds, the necessary notices may be deposited with the state sinking fund commission or the bank acting as escrow agent of the refunding bond proceeds and the escrow agent appropriately instructed and authorized to give the required notices at the prescribed time or times. If any officer of the public body signing any such notice shall no longer be in office at the time of the utilization of the notice, the notice shall nevertheless be valid and effective for its intended purpose. (1969, c. 12.)

## § 13-2E-10. Security provisions.

Refunding bonds shall be special obligations of the public body and shall be payable solely from and secured by a lien upon the gross revenues or net revenues of the enterprise, as shall be more fully described in the ordinance or resolution authorizing the issuance of refunding bonds, and the ordinance or resolution authorizing such refunding bonds shall provide for a special fund into which there shall be pledged a fixed amount or a fixed proportion of such revenues which shall be sufficient to pay the principal of and interest on the refunding bonds as the same become due.

In order to assure payment of the principal and interest on any refunding bonds it shall be the duty of the governing body of the public body to establish, levy, maintain and collect such fees, tolls, rentals, rates and other charges for the services of such enterprise as shall be necessary to produce revenues sufficient, after making due and reasonable allowance for contingencies and for a margin of error in estimates, to pay at all times principal of and interest on the refunding bonds as the same become due, to pay current expenses of operation and maintenance, to provide for depreciation, to provide for reserves for any of the foregoing, to comply in all respects with any contract or agreement with bondholders set forth in the ordinance or resolution authorizing such refunding bonds, and to meet any other obligations of the public body which by their terms are charges, liens, or encumbrances upon the revenues of such enterprise.

The ordinance or resolution authorizing any refunding bonds may contain such covenants with the holders of the refunding bonds as to the efficient management and operation of the enterprise; the collection, keeping and

in this article. The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this article shall not affect, the powers conferred by any other law. This article is remedial in nature and shall be liberally construed. (1969, c. 12.)

## § 13-2E-15. Severability.

If any one or more provisions of this article or the applicability thereof to any persons or circumstances are ever held by a final decision of a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision or provisions, application or applications of this article, and to this end, the provisions of this article are declared to be severable. (1969, c. 12.)

# ARTICLE 2F.

# PUBLIC OBLIGATIONS REGISTRATION ACT.


| Sec. | | Sec. | |
|---|---|---|---|
| 13-2F-1. | How article cited. | 13-2F-5. | Powers of official registrar; designee. |
| 13-2F-2. | Purposes; article governs over charter provisions. | 13-2F-6. | Confidentiality. |
| 13-2F-3. | Definitions. | 13-2F-7. | Application to public obligations approved by voters. |
| 13-2F-4. | Authority to issue public obligations in registered and book entry forms. | | |


## § 13-2F-1. How article cited.

This article may be cited as "Public Obligations Registration Act." (1986, c. 118.)

## § 13-2F-2. Purposes; article governs over charter provisions.

The purpose of this article is to provide a mechanism for public bodies in the state to issue public obligations in compliance with section 310(b)(1) of the tax equity and fiscal responsibility act of one thousand nine hundred eighty-two, United States Internal Revenue Code section 103(j) [26 USCS § 103(j)], as amended.

To fulfill the purpose, this article shall govern notwithstanding any charter provisions. (1986, c. 118.)

**Editor's notes.** — The bracketed USCS reference was inserted by the editor.

## § 13-2F-3. Definitions.

The following terms wherever used or referred to in this article shall have the following meanings, unless a different meaning plainly appears from the context:

The term "public body" means any city, town, county commission, building commission, board of education, public service district, political subdivision or

any other public entity, whether created before, on or after the effective date of this article, and the state of West Virginia acting through any of its agencies, boards, commissions or departments, having power to issue public obligations.

The term "public obligation" means notes, bonds, certificates or other obligations of a public body issued and outstanding on and after the first day of July, one thousand nine hundred eighty-six.

The term "registered" means, with respect to a public obligation, an obligation the ownership of which is noted on books of registration kept by a registrar and which is represented by certificates or other instruments to which no coupons for interest payments are attached.

The term "book-entry" means, with respect to a public obligation, an obligation the ownership of which is noted on books of registration kept by a registrar, but which ownership is not represented by any instrument.

The term "official registrar" means the official designated by the specific provisions of this code pursuant to which a public obligation is issued as the registrar of the public obligation and, in lieu of statutory designation, the person so designated by the act of the public body authorizing the issuance of the specific public obligation. (1986, c. 118.)

**Editor's notes.** — Concerning the reference to "the effective date of this article" in the second paragraph, Acts 1986, c. 118, which enacted this article, became effective June 7, 1986.

## § 13-2F-4. Authority to issue public obligations in registered and book entry forms.

Notwithstanding any other provision of this code to the contrary, on and after the first day of July, one thousand nine hundred eighty-six, any public body may issue public obligations in registered or book entry form in addition to any form authorized by the specific provisions of this code pursuant to which the public obligations are issued. (1986, c. 118.)

## § 13-2F-5. Powers of official registrar; designee.

The official registrar shall (a) act as transfer agent or registrar for the exchange or transfer of registered public obligations or maintain the records so that public obligations in book-entry form may be effected, or (b) contract with or otherwise designate a bank, trust company or other person to act as transfer agent or registrar for the registered public obligations or maintain the records so that public obligations in book-entry form may be effected. The bank, trust company or other person may include the federal government or any of its agencies or instrumentalities and may be located or have its principal office within or without the state. Public obligations in book-entry form shall be effected by means of entries on the record of the official registrar or his designee which shall reflect the description of the issue, the principal amount, the interest rate, the maturity date and the owner of the public obligation and other information as is considered by the official registrar or his designee to be appropriate. The official registrar or his designee may effect conversion between book-entry public obligations and registered public obligations for

**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 No. 7123, enacted by the City Council of the City of Charleston on January18, 2005.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 28th day of March, 2005.

James M. Reishman
City Clerk

Seal

## COMMITTEE REPORT

**TO:** **Clerk of the Council of the City of Charleston, West Virginia**

**FROM:** **The Committee on FINANCE**

Your Committee on **Finance**

has had under consideration: Bill No. 7123, authorizing the refunding of the Parking System Refunding Revenue Bonds, Series 1993, the Parking System Revenue Bonds, Series 1994-A, the Parking System Subordinate Revenue Bonds, Series 1994-B, and the Parking System Subordinate Revenue Bonds, Series 1995-A of The City of Charleston; authorizing the issuance of not more than $3,500,000 in Parking System Bond Anticipation Notes; authorizing the issuance of not more than $12,885,000 in aggregate principal amount of Parking System Refunding Revenue Bonds, Series 2005-A and Series 2005-B, 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 finance the cost of such refunding, to fund reserve accounts 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

and reports the same to Council with the recommendation that the

Bill do pass

CHAIRMAN

Bill No. 7123

Ordinance No. _____

Introduced in Council: January 3, 2005

Introduced by: Robert Reishman

Referred to: Finance Committee

Passed by Council:

A Bill authorizing the refunding of the Parking System Refunding Revenue Bonds, Series 1993, the Parking System Revenue Bonds, Series 1994 A, the Parking System Subordinate Revenue Bonds, Series 1994 B and the Parking System Subordinate Revenue Bonds, Series 1995 A of The City of Charleston; authorizing the issuance of not more than $3,500,000 in Parking System Bond Anticipation Notes; authorizing the issuance of not more than $12,885,000 in aggregate principal amount of Parking System Refunding Revenue Bonds, Series 2005 A and Series 2005 B, 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 finance the cost of such refunding, to fund reserve accounts 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.

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

## ARTICLE I

## DEFINITIONS, STATUTORY AUTHORITY, AND FINDINGS

SECTION 1.01. Definitions. The following terms shall have the following meaning in this Ordinance unless the context expressly requires otherwise:

"Act" shall mean Chapter 8, Article 12, Chapter 8, Article 16, and Chapter 13, Article 2E, of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

"Authorized Officer" shall mean the Mayor of the City or any other officer of the City specifically designated by resolution of the City Council.

"Bondholder" or "Owner of the Bonds" or "Registered Owner" or any similar term shall mean any person who shall be the registered owner of any Outstanding fully registered Bond.

"Bond Register" shall mean the books of the City maintained by the Registrar for the registration and transfer of the Bonds.

"Bonds" shall mean, collectively, the Parking System Refunding Revenue Bonds, Series 2005 A and 2005 B and any parity additional Bonds hereafter issued within the terms, restrictions and conditions contained in this Ordinance.

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

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Certificate of Authentication and Registration" shall mean the Certificate of Authentication and Registration on the Series 2005 A Bonds and Series 2005 B Bonds, substantially in the form set forth in a resolution supplemental hereto.

"City" shall mean The City of Charleston, a municipal corporation of the State of West Virginia, and, where appropriate, the City Council.

"City Clerk" shall mean the Clerk of the City.

"City Council" shall mean the Council of the City or any other governing body of the City that succeeds to the functions of the City Council as presently constituted.

"Closing Date" shall mean respectively, the dates upon which there is an exchange of the Note or Series 2005 A Bonds for the proceeds representing the original purchase price thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations issued pursuant thereof.

"Commission" shall mean the West Virginia Municipal Bond Comission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

"Committee" or "Parking Facilities Committee" shall mean the committee composed of the Mayor and other members of the City Council established in the Prior Ordinance and continued pursuant to Section 5.22 hereof.

"Conversion Date" shall mean the date upon which the Note is converted to the Series 2005 B Bonds, as set forth in a resolution supplemental hereto.

"Cost of Issuance Fund" shall mean the funds established for the Note and the Series 2005 A Bonds, as more specifically set forth in a resolution supplemental hereto.

"Costs"or similar terms shall mean all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant hereto, including, without limitation, the costs of refunding the Prior Bonds, interest accruing or to accrue thereon, redemption premiums, premiums for municipal bond insurance and reserve account insurance, letter of credit fees, expenses for fiscal or other agents, legal expenses and any other costs or expenses necessary, incidental, desirable or appurtenant to the issuance of the Notes, the Series 2005 Bonds and the refunding of the Prior Bonds.

"Depository Bank" shall mean the bank designated in a resolution supplemental hereto as eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC and any successor thereto.

"DTC" shall mean The Depository Trust Company, New York, New York.

"DTC Eligible" shall mean bonds meeting the qualifications, prescribed by The Depository Trust Company, New York, New York.

"Escrow Agent" shall mean the Escrow Agent with respect to each Escrow Agreement, which shall be appointed pursuant to a resolution supplemental hereto.

"Escrow Agreement" shall mean the agreements between the City and the Escrow Agent, substantially in the form of the agreement attached to a resolution supplemental hereto and by this reference made a part hereof, relating to the refunding and defeasance of the Prior Bonds.

"Escrow Fund" shall mean the escrow fund created by each Escrow Agreement.

"Event of Default" shall mean any occurrence or events specified in Section 8.01 hereof.

"FDIC" shall mean the Federal Deposit Insurance Corporation or any successor to the function of the FDIC.

"Fiscal Year" shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

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

"Gross Revenues" shall mean all rates, rents, fees, charges or other income received by or accrued to the Parking Facilities Committee from the operation of the Parking System, as calculated in accordance with generally accepted accounting principles.

"Independent Accountants" shall mean any certified public accountant or firm of certified public accountants which shall be retained by the City as independent accountants for the Parking System.

"Mayor" shall mean the Mayor of the City.

"Net Proceeds" shall mean the face amount of the Bonds, plus accrued interest or premium, if any, less Original Issue Discount, if any, and less proceeds deposited in the Reserve Account, if any.

"Net Revenues" shall mean Gross Revenues less Operating Expenses.

"Nonpurpose Investment" shall mean any investment property which is acquired with the gross proceeds or any other proceeds of the Series 2005 Bonds and is not acquired in order to carry out the governmental purpose of the Series 2005 Bonds.

"Note" shall mean the Parking System Bond Anticipation Note originally authorized to be issued pursuant to this Ordinance and resolution supplemental hereto.

"Note Repayment Account" shall mean the account established pursuant Section 3.01(B)(1) of this Ordinance.

"Note Reserve Account" shall mean the account established pursuant to Section 3.01(B)(2) of this Ordinance.

"Off-Street Parking Facilities" shall mean the parking lots, parking building or other structures, motor vehicle ramps within and leading to and from such buildings and structures, parking meters or other equipment, machinery or devices for obtaining revenue from public parking or motor vehicles, entrances, exits, fencing and all other facilities, equipment and accessories necessary or desirable for public parking of vehicles, for which fees or other charges are fixed, established and collected, pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities leading to or from such parking lots, parking buildings and other structures, and buildings, structures and facilities acquired or constructed by the City for lease or (prior to the sale thereof) sale for commercial, business or charitable use on, in or under such parking lots, parking buildings and structures, and all properties, real personal, tangible or intangible, used in connection therewith, now owned, operated or controlled by the City, or hereafter constructed or acquired by said City from any source whatsoever, within the City, provided, that Off-Street Parking Facilities do not include property owned by the City where municipal owned vehicles are parked or stored while being used in the performance of municipal functions.

"On-Street Parking Facilities" shall mean places on or in the streets of the City and parking meters or other equipment, machinery or devices installed, located or existing at or near the curbs of the streets adjacent to such places for collecting revenues from public parking of vehicles in such places, for which fees or other charges are fixed, established or collected, and all such facilities hereafter located, constructed or acquired by said City from any sources whatsoever for which fees or other charges are fixed, established or collected.

"Operating Expenses" unless qualified, shall mean the current expenses, paid or accrued, for repair, operation and maintenance of the Parking System (excluding depreciation and interest and principal of the Bond and Note indebtedness) and includes, without limiting the generality of the foregoing, supplies, labor, wages, the cost of materials and supplies used for current operations, administrative expenses of the City or the Parking Facilities Committee relating and chargeable to the Parking System and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles.

"Outstanding" when used with reference to Notes or Bonds and as of any particular date, describes all Notes or Bonds theretofore and thereupon being issued and delivered except (a) any Note or Bond cancelled by the Registrar for such Note or Bond at or prior to said date; (b) any Note or Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Note or Bond deemed to have been paid as provided by Section 9.01; and (d) with respect to determining the number or percentage of Bondholders or Notes or Bonds for the purpose of consents, notices and the like, any Note or Bond registered to the City.

"Parking System" shall mean all Off-Street Parking Facilities and On-Street Parking Facilities, as both facilities have been defined in this Ordinance and as further defined in a resolution supplemental hereto.

"Participant" shall mean the person or entity registered as such with DTC.

"Paying Agent" shall mean any paying agent for the Notes or Bonds appointed by a resolution supplemental hereto.

"Prior Bonds" shall mean the City's Parking System Refunding Revenue Bonds, Series 1993, dated June 1, 1993, issued in the original principal amount of $5,235,000 and currently outstanding in the principal amount of $3,000,000 (the "Series 1993 Bonds"), Parking System Revenue Bonds, Series 1994 A, dated December 15, 1994, issued in the original principal amount of $4,545,000, and currently outstanding in the principal amount of $3,720,000, Parking System Subordinate Revenue Bonds, Series 1994 B, dated December 15, 1994, issued in the original principal amount of $5,455,000, and currently outstanding in the principal amount of $4,035,000 and Parking System Subordinate Revenue Bonds, Series 1995, dated January 1, 1995, issued in the original principal amount of $1,620,000, and currently outstanding in the principal amount of $1,195,000 (collectively, the "Series 1994 and Series 1995 Bonds").

"Prior Bonds Redemption Date" shall mean the dates established by a resolution supplemental hereto for the redemption of each series of Prior Bonds.

"Prior Ordinances" shall mean collectively the following ordinances passed by the City Council, as amended and supplemented thereafter:

(a) An ordinance dated May 17, 1993, supplementing the Original Ordinance authorizing the issuance of the $5,235,000 Parking System Refunding Revenue Bonds, dated June 1, 1993; and

(b) An ordinance dated December 5, 1994, supplementing the Original Ordinance authorizing the issuance of the $4,545,000 Parking System Revenue Bonds and of the $5,455,000 Parking System Subordinate Revenue Bonds, dated December 15, 1994, and the issuance of the $1,620,000 Parking System Subordinate Revenue Bonds, dated January 1, 1995.

"Private Business Use" shall mean use directly or indirectly in any trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Purchase Price," for the purpose of computation of the Yield of the Series 2005 Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 2005 Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Series 2005 Bonds of each maturity is sold or, if the Series 2005 Bonds are privately placed, the price paid by the first buyer of the Series 2005 Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 2005 Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 2005 Bonds.

"Purchaser" or "Original Purchaser" shall mean with respect to the Bonds collectively, Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated, Charleston, West Virginia, or their successors and with respect to the Notes, Crews & Associates, Inc..

"Qualified Investments" shall mean and includes any of the following, unless otherwise set forth in the Supplemental Resolution:

(a) Government Obligations;

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

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said

Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

(h) The West Virginia " consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 of the Code of West Virginia, 1931, as amended; and

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

"Record Date" shall mean the day of the month which shall be so stated in the Bonds, regardless of whether such day is a Saturday, Sunday or other legal holiday.

"Redemption Price" shall mean such amount(s) as is established in a resolution supplemental hereto.

"Registrar" shall mean the bank to be designated in the Supplemental Resolution as the registrar for the Notes and Series 2005 Bonds, and any successor thereto.

"Regulations" shall mean temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1986, as amended.

"Repair, Operation and Maintenance Fund" shall mean the account created by Section 3.01(A)(2) hereof.

"Representation Letter" shall mean the Letter Agreement among the City, DTC and the Paying Agent.

"Revenue Fund" shall mean the fund created by Section 3.01 hereof.

"Series 2005 Bonds" shall mean collectively the Parking System Refunding Revenue Bonds, Series 2005 A and Series 2005 B, of the City originally authorized to be issued pursuant to this Ordinance.

"Series 2005 A Bonds" shall mean the Parking System Refunding Revenue Bonds, Series 2005 A, of the City, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 2005 A Bonds Rebate Fund" shall mean the Series 2005 A Bonds Rebate Fund created by Section 3.01(A)(4) hereof.

"Series 2005 A Bonds Redemption Account" shall mean the Series 2005 A Bonds Redemption Account created by Section 3.01(B)(5) hereof.

"Series 2005 A Bonds Reserve Account" shall mean the Series 2005 A Bonds Reserve Account created by Section 3.01(B)(4) hereof.

"Series 2005 A Bonds Reserve Requirement" shall mean, as of any date of calculation, the lesser of (i) 10% of the original stated principal amount of the Series 2005 A Bonds; (ii) the maximum amount of principal and interest which will become due on the Series 2005 A Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Series 2005 A Bonds.

"Series 2005 A Bonds Sinking Fund" shall mean the Series 2005 A Bonds Sinking Fund created by Section 3.01(B)(3) hereof.

"Series 2005 B Bonds" shall mean the Parking System Refunding Revenue Bonds, Series 2005 B, of the City, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 2005 B Bonds Rebate Fund" shall mean the Series 2005 B Bonds Rebate Fund created by Section 3.01(A)(5) hereof.

"Series 2005 B Bonds Redemption Account" shall mean the Series 2005 B Bonds Redemption Account created by Section 3.01(B)(8) hereof.

"Series 2005 B Bonds Reserve Account" shall mean the Series 2005 B Bonds Reserve Account created by Section 3.01(B)(7) hereof.

"Series 2005 B Bonds Reserve Requirement" shall mean, as of any date of calculation, the lesser of (i) 10% of the original stated principal amount of the Series 2005 B Bonds; (ii) the maximum amount of principal and interest which will become due on the Series 2005 B Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Series 2005 B Bonds.

"Series 2005 B Bonds Sinking Fund" shall mean the Series 2005 B Bonds Sinking Fund created by Section 3.01(B)(6) hereof.

"State" shall mean the State of West Virginia.

"Supplemental Resolution" shall mean any ordinance or resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution authorizing the sale of the Series 2005 Bonds and the Note to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"Surplus Revenues"shall mean the Net Revenues not required by this Ordinance to be set aside and held for the payment of or security for the Bonds or any other obligations of the City, including, without limitation, the Sinking Funds, the Reserve Accounts and the Repair, Operations and Maintenance Fund.

"Term Bonds" shall mean Series 2005 Bonds subject to mandatory sinking fund redemption, as described by Section 2.08 hereof.

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

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

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Ordinance; and the term "hereafter" shall mean after the date of enactment of this Ordinance.

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

SECTION 1.02. Authority for this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 8, Article 12 and Chapter 8, Article 16 (collectively, hereinafter referred to as the "Bond Act") and Chapter 13, Article 2E (hereinafter referred to as the "Refunding Act") of the Code of West Virginia, 1931, as amended (collectively, the Bond Act and the Refunding Act are hereinafter referred to as the "Act"), and other applicable provisions of law.

SECTION 1.03. Findings. It is hereby found, determined and declared as follows:

(A) The City now owns, maintains and operates an on-street and off-street Parking System, the acquisition and construction of certain portions thereof having been permanently financed or refinanced, along with the funds from other sources available theref or, with the proceeds of the Prior Bonds.

(B) The City of Charleston Parking System Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds") were issued for the purpose of refunding and redeeming prior to maturity bonds issued to build certain parking garages with the Parking System.

(C) The City of Charleston Parking System Revenue Bonds, Series 1994 A, the Parking System Subordinate Revenue Bonds, Series 1994B and the Parking System Subordinate Revenue Bonds, Series 1995 A (the "Series 1994 and 1995 Bonds") were issued for the purpose of adding additional parking garages to the Parking System.

(D) The Series 2005 A Bonds are being issued for the purpose of refunding and redeeming prior to maturity the Series 1994 and Series 1995 Bonds. The Note is being issued to provide funds to refund and redeem the Series 1993 Bonds and such Note shall be paid from the funds derived from the Series 2005 B Bonds.

(E) The City derives revenues from the Parking System, and said revenues are not pledged or encumbered in any manner, except for the Prior Bonds issued and outstanding under the Prior Ordinances and to be refunded and redeemed with the proceeds of the Note and Series 2005 A Bonds hereinafter authorized.

(F) The City is authorized to issue refunding revenue notes and bonds to refund, pay or discharge all or any part of its outstanding revenue bonds. The City may now refund the Prior Bonds at a savings to the City. The City hereby determines that it would be to the benefit of the City to refund the Prior Bonds with proceeds from the issuance of the

Note and Series 2005 Bonds pursuant to this Ordinance in multiple series in the aggregate principal amount not to exceed $12,885,000.

(G) Based upon the assumed principal amount, maturity schedule and interest rates for the Series 2005 Bonds presented to the City by the Original Purchaser, and after making allowance for the use of cash on hand of the City, the Series 2005 Bonds show a net present value debt service savings to the City after deducting all expenses of the refunding and the costs of issuing the Notes and the Series 2005 Bonds.

(H) The City shall not sell the Notes and the Series 2005 Bonds without setting forth in the Supplemental Resolution the determination set forth in paragraph G above, based upon the actual principal amount, maturity schedule and interest rates for the Series 2005 Bonds, and the City shall not issue the Series 2005 Bonds without having obtained from an Independent Certified Public Accountant a certification that the amount of savings stated to be achieved by the refunding shall in fact be saved, based upon their review, comparison and analysis of the net interest cost in dollars of the Series 2005 Bonds and the net interest cost in dollars of the Prior Bonds.

(I) Subject to the determination and certification required by paragraph H above, it is in the best interests of the City, and the residents thereof, that the City issue the Note and the Series 2005 Bonds and to secure the Series 2005 Bonds by a pledge and assignment of the Net Revenues derived from the operation of the System, the moneys in the respective sinking fund and reserve accounts for the Series 2005 Bonds, unexpended proceeds of the Series 2005 Bonds, if any, and as further set forth herein. The Note will be secured solely by the pledge of the City to issue the Series 2005 B Bonds and not by a lien on the revenue of the System.

(J) The estimated revenues to be derived in each year from the operation of the System after the refunding and defeasance of the Prior Bonds will be sufficient to pay all Operating Expenses of the System, the principal of and interest on the Series 2005 Bonds authorized to be issued pursuant to this Ordinance and all sinking fund, reserve account and other payments provided for in this Ordinance or the Prior Ordinances.

(K) The Series 2005 Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the form set forth in a resolution supplemental 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.

(L) The City, under the provisions of Section 17 of the Bond Act may fully fund the Reserve Account requirement from the Bonds proceeds or from other moneys of the Parking System.

(M) It is in the best interests of the City that the Note and the Series 2005 A Bonds be sold to the Original Purchaser at the terms set forth in the Supplemental Resolution and that the Note be converted to the Series 2005 B Bonds as provided in the Supplemental Resolution.

(N) All things necessary to make the Series 2005 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 2005 Bonds, will be timely done and duly performed.

(O) The enactment of this Ordinance, and the execution and issuance of the Series 2005 Bonds, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument to which the City is a party or by which it may be bound or affected.

(P) The City shall not permit at any time any of the proceeds of the Series 2005 Bonds or other funds of the City to be used directly or indirectly in any manner which would result in the exclusion of the Series 2005 Bonds from the treatment afforded by Section 103(a) of the Code.

(Q) The City will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds.

(R) The Bonds will not be federally guaranteed within the meaning of Section 149(b) of the Code.

(S) In accordance with Section 4 of the Bond Act, the Parking System is under the supervision and control of the Parking Facilities Committee.

(T) The City does hereby find and determine that such Parking Facilities Committee shall be continued as set forth herein.

SECTION 1.04. Ordinance Constitutes Contract. In consideration of the acceptance of the Series 2005 Bonds hereinafter authorized 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 owners of the Series 2005 Bonds, 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 legal owners of any and all of such Series 2005 Bonds hereinafter authorized, all of which shall be of equal rank and without preference, priority or distinction between any one such bond and any other such bond by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

## ARTICLE II

## AUTHORIZATION OF REFUNDING AND REDEMPTION; AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF THE NOTE AND THE BONDS

SECTION 2.01A. Authorization of Refunding and Redemption of the Series 1993 Bonds. The lien of the Series 1993 Bonds outstanding as of the date of issuance of the Note imposed by the Prior Ordinance on the revenue of the Parking System is hereby ordered terminated, discharged and released upon the payment onto the Series 1993 Escrow Fund from the proceeds of the Note, together with other moneys available therefor, including those moneys transferred as provided below, of the following: (a) an amount equal to the fiscal and paying agent charges, and (b) an amount which will be simultaneously invested in United States Treasury Obligations bearing interest and having maturities sufficient to provide (i) for the payment of the principal of the Series 1993 Bonds as the same mature on each principal payment date established with respect thereto prior to the Series 1993 Bonds Redemption Date, if any, established for such Series 1993 Bonds, (ii) for the payment of the redemption price of the Series 1993 Bonds outstanding on the Series 1993 Bonds Redemption Date, if any, established for such Series 1993 Bonds, and (iii) for the payment of the interest on the Series 1993 Bonds as the same becomes due. Contemporaneously with the deposit of proceeds of the Note into the Series 1993 Escrow Fund, and as prescribed by the Series 1993 Escrow Agreement, the amounts on deposit in the sinking fund including the reserve account therein, created and maintained on behalf of the Series 1993 Bonds shall be deposited into the Series 1993Escrow Fund and simultaneously invested as provided in the Series 1993 Escrow Agreement.

SECTION 2.01B. Authorization of Refunding and Redemption of the Series 1994 and Series 1995 Bonds. The lien of the Series 1994 and Series 1995 Bonds outstanding as of the date of issuance of the Series 2005 A Bonds imposed by the Prior Ordinances on the revenues of the Parking System is hereby ordered terminated, discharged and released upon the payment into the Series 1994/1995 Escrow Fund relating thereto from the proceeds of the Series 2005 A Bonds, together with other moneys available therefor, including those moneys transferred as provided below, of the following: (a) an amount equal to the fiscal and paying agent charges, and (b) an amount which will be simultaneously invested in United States Treasury Obligations bearing interest and having maturities sufficient to provide (i) for the payment of the principal of the Series 1994 and Series 1995 Bonds as the same mature on each principal payment date established with respect thereto prior to the Series 1994 and Series 1995 Bonds Redemption Date, if any, established for such Series 1994 and Series 1995 Bonds, (ii) for the payment of the redemption price of the Series 1994 and Series 1995 Bonds outstanding on the Series 1994 and Series 1995 Bonds Redemption Date, if any, established

for such Series 1994 and Series 1995 Bonds, and (iii) for the payment of the interest on the Series 1994 and Series 1995 Bonds as the same becomes due. Contemporaneously with the deposit of proceeds of the Series 2005 A Bonds into the Series 1994/1995 Escrow Fund, and as prescribed by the Series 1994/1995 Escrow Agreement, the amounts on deposit in each sinking fund including the reserve account therein, created and maintained on behalf of the Series 1994 and Series 1995 Bonds shall be deposited into the Series 1994/1995 Escrow Fund and simultaneously invested as provided in the Series 1994/1995 Escrow Agreement. Upon the refunding of the Series 1994 and Series 1995 Bonds, the amounts on deposit in the Repair, Operation and Maintenance Fund created and maintained under the Prior Ordinances with respect to the Prior Bonds shall be transferred as set forth in the Supplemental Resolution.

SECTION 2.02A. Authorization and Term of Note. For the purpose of refunding the Series 1993 Bonds, there shall be issued the Parking System Bond Anticipation Note. The Note shall be in such aggregate principal amount, not to exceed $3,500,000; shall be dated, shall bear interest and shall mature at such time as is provided by a supplemental resolution and shall be secured solely by the pledge of the City to issue the Series 2005 B Bonds.

SECTION 2.02B. Authorization and Terms of Series 2005 Bonds. For the purpose of refunding the Series 1994 and Series 1995 Bonds, there shall be issued the Parking System Refunding Revenue Bonds, Series 2005 A. Following the issuance of the Series 2005 A Bonds and as set forth in a resolution supplemental hereto, the Notes shall convert to the Parking System Refunding Revenue Bonds, Series 2005 B of the City. The Series 2005 Bonds shall be in such aggregate principal amount, not to exceed $12,885,000; shall be dated such date; shall bear interest payable semiannually at such dates and at such rate or rates not exceeding the rate permitted by the Act; shall be in fully registered form; shall mature at such time or times, not exceeding forty (40) years after the date of issuance; shall have such denominations; and shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and as the City Council shall prescribe by Supplemental Resolutions adopted in connection with the sale of such Series 2005 A and Series 2005 B Bonds.

The Bonds shall be payable as to principal at the office of the Paying Agent in any coin or currency which on the respective date of payment of principal and interest, is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address that appears on the books of the Registrar or, in the event of a default in the payment on the Series 2005 Bonds, that special record date to be fixed by the Registrar by notice given to the Registered Owners not less than ten (10) days prior to said special record date (the "Special Record Date") or, if requested in the case of such an owner of $1,000,000 or more in principal amount of Series 2005 Bonds, by wire

transfer to a domestic bank account specified in writing at least five (5) days prior to the Record Date by such owner.

The Series 2005 Bonds shall, at the option of the City, be redeemable in whole or in part, at the times, in the manner, and upon payment of the redemption prices, as provided in the Supplemental Resolution.

The Series 2005 Bonds shall be sold as soon as practical and in the best interests of the City, as may be authorized and permitted by applicable law, and delivered to the Original Purchaser thereof; provided, that such Original Purchaser and the City shall have agreed to the terms of the purchase thereof.

SECTION 2.03. Execution of Bonds. Bonds shall be executed in the name of the City by the manual or facsimile signature of the Mayor, and the seal of the City shall be affixed thereto or imprinted thereon and attested by the manual or facsimile signature of the City Clerk. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Bonds shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

SECTION 2.04. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in a resolution supplemental hereto, 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 any 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 2.05. Book Entry System for Bonds. A. Each series of the Series 2005 Bonds shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Series 2005 Bonds of each maturity, registered in the name of CEDE & CO., as nominee of DTC. Except as provided in paragraph E below, all of the Series 2005 Bonds shall be registered in the registration books kept by the Registrar in the name of CEDE & CO., as nominee of DTC; provided that if DTC shall request that the

Series 2005 Bonds be registered in the name of a different nominee, the Registrar shall exchange all or any portion of the Series 2005 Bonds registered in the name of such nominee or nominees. No person other than DTC or its nominee shall be entitled to receive from the City or the Registrar either a Series 2005 Bond or any other evidence of ownership of the Series 2005 Bonds, or any right to receive any payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the Series 2005 Bonds on the registration books maintained by the Registrar, in connection with discontinuing the book entry system as provided in paragraph E below.

B. At or prior to settlement for the Series 2005 Bonds, the City and the Registrar shall execute or signify their approval of a representation letter addressed to DTC in a form satisfactory to DTC (the "Representation Letter"). Any successor Registrar shall, in its written acceptance of its duties under this Ordinance, agree to take any actions necessary from time to time to comply with the requirements of the Representation Letter.

C. So long as the Series 2005 Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the principal or Redemption Price of or interest on such Series 2005 Bonds shall be made to DTC or its nominee at the addresses set forth in the Representation Letter in New York Clearing House or equivalent next day funds on the dates provided for such payments to be made to any Registered Owner under this Ordinance. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the City and the Registrar with respect to the principal or Redemption Price of or interest on the Series 2005 Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Series 2005 Bonds Outstanding of any maturity, the Registrar shall not require surrender by DTC of the Series 2005 Bonds so redeemed, but DTC may return such Series 2005 Bonds and make an appropriate notation on the Series 2005 Bond certificate as to the amount of such partial redemption; provided that DTC shall deliver to the Registrar, upon request, a written confirmation of such partial redemption. The records maintained by the Registrar shall be conclusive as to the amount of the Series 2005 Bonds of such maturity which have been redeemed.

D. The City, the Paying Agent and the Registrar may treat DTC as the sole and exclusive owner of the Series 2005 Bonds registered in its name or the name of its nominee for the purposes of payment of the principal or Redemption Price of or interest on the Series 2005 Bonds, selecting the Series 2005 Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to the Registered Owners under this Ordinance, registering the transfer of Series 2005 Bonds, obtaining any consent or other action to be taken by the Registered Owners and for all other purposes whatsoever; and neither the City nor the Registrar shall be affected by any notice to the contrary. Neither the City nor the Registrar shall have any responsibility or obligation to any direct or indirect participant in DTC, any person claiming a beneficial ownership interest in the Series 2005 Bonds under or

through DTC or any such participant, or any other person which is not shown on the registration books of the Registrar as being a Registered Owner with respect to (i) the Series 2005 Bonds, (ii) the accuracy of any records maintained by DTC or any such participant, (iii) the payment by DTC or any such participant of any amount in respect of the principal or Redemption Price of or interest on the Series 2005 Bonds, (iv) any notice which is permitted or required to be given to the Registered Owners under this Ordinance, (v) the selection by DTC or any such participant of any person to receive payment in the event of a partial redemption of the Series 2005 Bonds or (vi) any consent given or other action taken by DTC as Registered Owner.

E. The book entry system for registration of the ownership of the Series 2005 Bonds may be discontinued at any time if either: (i) DTC determines to resign as securities depository for the Series 2005 Bonds; or (ii) the City determines that continuation of the system of book entry transfers through DTC (or through a successor securities depository) is not in the best interest of the beneficial owners of the Series 2005 Bonds. In either of such events (unless in the case described in clause (ii) above, the City appoints a successor securities depository), the Series 2005 Bonds shall be delivered in registered certificate form to such persons, and in such maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the City or the Registrar for the accuracy of such designation. Whenever DTC requests the City and the Registrar to do so, the City and the Registrar shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for another securities depository to maintain custody of certificates evidencing the Series 2005 Bonds.

SECTION 2.06. Negotiability, Transfer and Registration. Subject to the provisions for transfer or registration set forth below, the Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Registered Owner, in accepting any of said Bonds, shall be conclusively deemed to have agreed that such Bonds shall be, and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Registered Owner shall further be conclusively deemed to. have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Bonds remain Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Bonds.

The Bonds shall be transferable only upon the Bond Register by the Registered Owner thereof in person or by its attorney or legal representative duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Owner or such duly authorized attorney or legal representative.

In all cases in which the privilege of exchanging Bonds or transferring the Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or transfer shall forthwith be cancelled by the Registrar. For every such exchange or transfer of Bonds, the Registrar may-make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of said Registrar incurred in connection therewith, which changes and expenses shall be paid by the Registered Owner requesting such transfer or exchange. The Registrar shall not be obligated to make any such change or transfer of Bonds during the period beginning with the Record Date and ending on the date or, in a case of any partial redemption of Bonds during the fifteen (15) days next preceding the date of the selection of Bonds to be redeemed.

SECTION 2.07. Notes and Bonds Mutilated, Destroyed, Stolen or Lost. In case any Notes and Bonds shall become mutilated or be destroyed, stolen or lost, the City may in its discretion issue and deliver a new Note and Bond in exchange and substitution for such Notes and Bonds so mutilated, destroyed, stolen or lost, upon surrender and cancellation of such mutilated Note and Bond or in lieu of and substitution for the Note and Bond, if any, destroyed, stolen or lost, and upon the Registered Owner's furnishing the City proof of his or her ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur. All Notes and Bonds so surrendered shall be cancelled by the Registrar and held for the account of the City. If such Note and Bond shall have matured or be about to mature, instead of issuing a substitute Note and Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Note and Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Notes and Bonds issued pursuant to this Section 2.07 shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Notes and Bonds be at any time found by any one, and such duplicate Notes and 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 Notes and Bonds issued hereunder.

SECTION 2.08. Term Bonds. In the event Term Bonds are issued pursuant to this Ordinance, the following provisions shall apply:

A. The amounts to be deposited, apportioned and set apart by the City from the Revenue Fund and into the Redemption Accounts for the Series 2005 Bonds in accordance with Subsection 4.03.A(3) shall include (after credit as provided below) on the first of each month, beginning on the first day of that month which is 12 months prior to the first mandatory Redemption Date of said Term Bonds, a sum equal to 1/12th of the amount required to redeem

the principal amount of such Term Bonds which are to be redeemed as of the next ensuing mandatory Redemption Date, which amounts and dates, if any, with respect to a series of Bonds shall be set forth in the Supplemental Resolution relating thereto.

B. At its option, to be exercised on or before the 60th day next preceding any such mandatory Redemption Date, the City may (a) deliver to the Registrar for cancellation such Term Bonds in any aggregate principal amount desired or (b) receive a credit in respect of its mandatory redemption obligation for any such Term Bonds which prior to said date have been redeemed (otherwise than pursuant to this section) and canceled by the Registrar and not theretofore applied as a credit against any such mandatory redemption obligation. Each Term Bond so delivered or previously redeemed shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the City on such mandatory Redemption Date, and Term Bonds delivered in excess of such mandatory redemption obligation shall be credited against future mandatory redemption obligations in the order directed by the City, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

C. The City shall on or before the 60th day next preceding each mandatory Redemption Date furnish the Registrar and the Commission with its certificate indicating whether and to what extent the provisions of (a) and (b) of the preceding paragraph are to be utilized with respect to such mandatory redemption payment and stating, in the case of the credit provided for in (b) of the preceding paragraph, that such credit has not theretofore been applied against any mandatory redemption obligation.

D. After said 60th day but prior to the date on which the Registrar selects the Term Bonds to be redeemed, the Commission may use the moneys in the Redemption Accounts for the Series 2005 Bonds to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Commission shall advise the City and the Registrar of any Term Bonds so purchased, and they shall be credited by the Registrar at 100% of the principal amount thereof against the obligation of the City on such mandatory Redemption Date, and any excess shall be credited against future mandatory redemption obligations in the order directed by the City, and the principal amount of such Term Bonds to be redeemed pursuant to mandatory sinking fund redemption shall be accordingly reduced.

E. The Registrar shall call for redemption, in the manner provided herein, an aggregate principal amount of such Term Bonds, at the principal amount thereof plus interest accrued to the Redemption Date (interest to be paid from the Sinking Funds of the Series 2005 Bonds), as will exhaust as nearly as practicable the Redemption Account payment designated to be made in accordance with paragraph (A) of this section. Such redemption shall be by random selection made on the 45th day preceding the mandatory Redemption Date, in

such manner as may be determined by the Registrar. For purposes of this section, "Term Bonds" shall include any portion of a fully registered Term Bond, in integrals of $5,000.

SECTION 2.09. Bonds Secured by Pledge of Net Revenues; Not to be Indebtedness of the City; Note is Not Secured by Revenues of the Parking System. The payment of the debt service of all of the Series 2005 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the Parking System. Such Net Revenues, in the amount sufficient to pay the principal of and interest on the Bonds and to make the payments required into the Sinking Fund and the Reserve Account therein are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due. The Bonds shall not, in any event, be or constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from Net Revenues and otherwise as provided herein. No Registered Owner or Owners of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Bonds or the interest thereon. The Note is not secured by the Net Revenues of the Parking System.

SECTION 2.10. Notice of Redemption. (a) The Registrar shall cause notice of any redemption of Bonds to be mailed by first class mail to the Owners of all Bonds to be redeemed at the addresses thereof appearing in the Bond Register. Each such notice shall (i) be mailed not more than 60 days nor less than 30 days prior to the redemption date, (ii) identify the Bonds to be redeemed (specifying the CUSIP numbers, if any, assigned to the Bonds), (iii) specify the redemption date and the Redemption Price, and (iv) state that on the redemption date the Bonds called for redemption will be payable at the principal corporate trust office of the Paying Agent, that from that date the Bonds called for redemption will be deemed to be paid, and interest will cease to accrue, and that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein or notice of redemption or mailing thereof (including any failure to mail such notice), shall affect the validity of the redemption proceedings for any other Bonds for which notice was properly given.

(b) If at the time of mailing of any notice of redemption the City shall not have deposited with the Paying Agent moneys sufficient to redeem all the Bonds called for redemption, such notice shall state that it is subject to the deposit of such moneys with the Paying Agent not later than the opening of business on the redemption date and shall be of no effect unless such moneys are so deposited. If such moneys are not deposited by such date and time, the Registrar promptly shall notify the Owners of all Bonds called for redemption of such fact.

(c) So long as DTC (as CEDE & CO.) is the Registered Owner of the Series 2005 Bonds, the Registrar shall send all notices of redemption to DTC and shall verify

that DTC has received notice. Copies of all redemption notices relating to optional redemption of the Series 2005 Bonds shall also be sent to registered securities depositories.

All official notices of redemption shall be dated and shall state:

(1) The Redemption Date,

(2) The Redemption Price,

(3) If less than all outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,

(4) That on the Redemption Date, the Redemption Price and interest accrued will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,

(5) The place where such Bonds are to be surrendered for payment of the Redemption Price, which place of payment shall be the principal office of the Paying Agent, and

(6) Such other information, if any, as shall be required for DTC-eligible Bonds.

SECTION 2.11 Form of Bonds. The text of the Bonds and the text of the Note shall be provided in the supplemental resolution approving the same.

ARTICLE III

PARKING SYSTEM REVENUES AND APPLICATION THEREOF

SECTION 3.01. Establishment of Funds and Accounts with Depository Bank. (A) Pursuant to this Article IV, the following special funds are hereby created with (or continued if previously established by the Prior Ordinances), and shall be held by, the Depository Bank, separate and apart from all other funds and accounts of the Depository Bank or the City and from each other, and used solely for the purposes provided herein:

(1) Revenue Fund (established by the Prior Ordinances);

(2) Repair, Maintenance and Operations Fund (established by the Prior Ordinances);

(3) Costs of Issuance Fund;

(4) Series 2005 A Bonds Rebate Fund; and

(5) Series 2005 B Bonds Rebate Fund.

(B) Establishment of Funds and Accounts with Commission. Pursuant to this Article IV, the following special funds and accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds and accounts of the Commission or the City and from each other:

(1) Note Repayment Account;

(2) Note Reserve Account;

(3) Series 2005 A Bonds Sinking Fund;

(4) Series 2005 A Bonds Reserve Account;

(5) Series 2005 A Bonds Redemption Account;

(6) Series 2005 B Bonds Sinking Fund;

(7) Series 2005 B Bonds Reserve Account; and

(8) Series 2005 B Bonds Redemption Account.

SECTION 3.02. Disposition of Parking System Revenues. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the City in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner provided in this Ordinance. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(A) All revenues deposited in the Revenue Fund shall be used first to pay current Operating Expenses of the Parking System.

(B) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) commencing 6 months prior to the first interest payment date of the Series 2005 A Bonds, a sum equal to 1/6th of the amount of interest which will become due on the Series 2005 A Bonds on the next ensuing semiannual interest payment date for deposit in the Series 2005 A Bonds Sinking Fund; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2005 A Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2005 A Bonds deposited therein; and (ii) commencing 6 months prior to the first interest payment date of the Series 2005 B Bonds, a sum equal to 1/6th of the amount of interest which will become due on the Series 2005 B Bonds on the next ensuing semiannual interest payment date for deposit in the Series 2005 B Bonds Sinking Fund; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2005 B Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2005 B Bonds deposited therein.

(C) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission for deposit into the respective Sinking Fund (i) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 2005 A Bonds, a sum equal to 1/12th of the amount of

principal which will mature or be redeemed and become due on the Series 2005 A Bonds on the next ensuing annual principal payment date or mandatory Redemption Date for deposit in the Series 2005 A Bonds Sinking Fund and in the Series 2005 A Bonds Redemption Account in the case of the Term Bonds which are to be redeemed; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing annual principal payment date or mandatory Redemption Date is less than or greater than 12 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date; and (ii) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 2005 B Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 2005 B Bonds on the next ensuing principal payment date or mandatory Redemption Date for deposit in the Series 2005 B Bonds Sinking Fund and in the Series 2005 B Bonds Redemption Account in the case of the Term Bonds which are to be redeemed; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing annual principal payment date or mandatory Redemption Date is less than or greater than 12 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date.

(D) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) an amount to be deposited in the Series 2005 A Bonds Reserve Account which will be sufficient to remedy any decrease in value of the Series 2005 A Bonds Reserve Account below the Series 2005 A Bonds Reserve Requirement or any withdrawal from the Series 2005 A Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2005 A Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2005 A Bonds Reserve Account is less than the Series 2005 A Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2005 A Bonds Reserve Account for deposit into the Series 2005 A Bonds Sinking Fund; and (ii) an amount to be deposited in the Series 2005 B Bonds Reserve Account which will be sufficient to remedy any decrease in value of the Series 2005 B Bonds Reserve Account below the Series 2005 B Bonds Reserve Requirement or any withdrawal from the Series 2005 B Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2005 B Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2005 B Bonds Reserve Account is less than the Series 2005 B Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2005 B Bonds Reserve Account for deposit into the Series 2005 B Bonds Sinking Fund. To the extent Net Revenues and any other legally available funds are available therefor, the amount so deposited shall be used to restore the amount of

moneys on deposit in the Series 2005 A Bonds Reserve Account or the Series 2005 B Bonds Reserve Account to an amount equal to the respective Reserve Requirement; provided, that no payments shall be required to be made into the such Reserve Accounts whenever and as long as the amounts deposited therein shall be equal to the respective Reserve Requirement.

(E) The City shall next, each month after all payments required above have been made, transfer the balance remaining in the Revenue Fund to the Repair, Maintenance and Operation Fund. All funds in the Repair, Maintenance and Operation Fund shall be kept apart from all other funds of the City or of the Depository Bank and shall be invested and reinvested in as provided herein. Withdrawals and disbursements may be made from the Repair, Maintenance and Operation Fund as provided in Section 3.04 hereof.

(F) Moneys in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall be come due. Moneys in the Series 2005 A Bonds Reserve Account and the Series 2005 B Bonds Reserve Account shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall come due, when other moneys in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund are insufficient therefor, and for no other purpose, except for permitted transfers to the respective Rebate Fund.

Except to the extent transferred to the respective Rebate Fund, all investment earnings on moneys in the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 A Bonds Redemption Account, the Series 2005 B Bonds Sinking Fund, the Series 2005 B Bonds Reserve Account and the Series 2005 B Bonds Redemption Account shall be returned, not less than once each year, by the Commission to the City, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, and then to the next ensuing principal payment due thereon.

Except to the extent transferred to the respective Rebate Fund, any withdrawals from the Series 2005 A Bonds Reserve Account and the Series 2005 B Bonds Reserve Account which result in a reduction in the balance of such accounts to below the respective Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

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

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

The City shall not be required to make any further payments into the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Sinking Fund and the Series 2005 B Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity basis and pro rata, all in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 A Bonds Redemption Account, the Series 2005 B Bonds Sinking Fund, the Series 2005 B Bonds Reserve Account and the Series 2005 B Bonds Redemption Account created hereunder, and all amounts required for such accounts shall be remitted to the Commission from the Revenue Fund by the City at the times provided herein.

Moneys in the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 A Bonds Redemption Account, the Series 2005 B Bonds Sinking Fund, the Series 2005 B Bonds Reserve Account and the Series 2005 B Bonds Redemption Account shall be invested and reinvested by the Commission as provided herein.

(G) If on any payment date the Net Revenues are insufficient to place the required amount in any of the funds as hereinafter provided, the deficiency shall be made up in subsequent payments to such funds.

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

SECTION 3.03. Reserve Account Letter of Credit or Surety Bond. The City may, in lieu of funding the Series 2005 A Bonds Reserve Account or the Series 2005 B Bonds Reserve Account with cash or Qualified Investments, satisfy the respective Reserve Requirement by the deposit into the respective Reserve Accounts of a reserve account letter of credit, a surety bond, or other credit facility in an amount at least equal to the respective Reserve Requirement. The City hereby authorizes the purchase of a reserve account letter of

credit, a surety bond, or other credit facility and the execution and delivery of any applicable reimbursement agreement or note in such forms as shall be described in a Supplemental Resolution.

SECTION 3.04. Repair, Maintenance and Operation Fund. Upon the issuance of the Series 2005 A Bonds, the City shall transfer to the Repair, Maintenance and Operation Fund such amount as is approved by a resolution supplemental hereto. Moneys held in the Repair, Maintenance and Operation Fund shall be used to pay costs of repair (including replacements), maintenance and operation of the Parking System.

Except as hereinafter provided, the City may withdraw money from the Repair, Maintenance and Operation Fund solely replacements, emergency repairs, improvements or extensions to the Parking System. The City is not required to replace such draws except from the revenue deposited pursuant to Section 3.02 (E) above; provided, that if there is on deposit in the Repair, Maintenance and Operation Fund a sum equal to the aggregate amount of estimated repair (including replacements), maintenance and operations of the Parking System for the next Fiscal Year, as certified by the Parking Committee, and all payments required by the Ordinance at such time, including any deficiencies for prior payments, have been fully made and the City shall have complied fully with all covenants, agreements and provisions of this Ordinance, then the City may withdraw any sums in excess of said amount and use such sum for any lawful purpose.

## ARTICLE IV

## REGISTRAR; PAYING AGENT

SECTION 4.01. Appointment of Registrar. The Registrar shall be appointed by a Supplemental Resolution. The Mayor shall be authorized and directed by such Supplemental Resolution to enter into an agreement with the Registrar, the substantial form of which agreement shall be approved by said supplemental resolution.

SECTION 4.02. Responsibilities of Registrar. The recitals of fact in the Series 2005 Bonds shall be taken as statements of the City, and the Registrar shall not be responsible for their accuracy. The Registrar shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Series 2005 Bonds by the City. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the Series 2005 Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 4.01.

SECTION 4.03. Evidence on Which Registrar May Act. Except as otherwise provided by Section 4.02, the Registrar shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. Whenever the Registrar shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of the Mayor of the City, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

SECTION 4.04. Compensation and Expenses. The City shall pay to the Registrar from time to time reasonable compensation for all services, including the first transfer of registration of Series 2005 Bonds and the exchange of Series 2005 Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

SECTION 4.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Series 2005 Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or effect or aid in any reorganization growing out of the enforcement of the Series 2005 Bonds or the Ordinance,

whether or not any such committee shall represent the Owners of a majority in principal amount of the Series 2005 Bonds Outstanding.

SECTION 4.06. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than sixty (60) days' written notice to the City and to the registered owners at the address which appears on the Bond Register. Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the City or Registered Owners, in which event such resignation shall take effect immediately.

SECTION 4.07. Removal. The Registrar may be removed at any time by the City or by the Registered Owners of a majority in principal amount of the Series 2005 Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the City or by such Registered Owners or their attorneys duly authorized in writing and delivered to the City, as the case may be. Copies of each such instrument shall be delivered by the City to the Registrar.

SECTION 4.08. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Registered Owners of a majority in principal amount of the Series 2005 Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Registered Owners or their attorneys duly authorized in writing and delivered to the City and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the City shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Registered Owners. Within twenty (20) days after the effective date of such appointment, a copy of such notice shall also be mailed to each Registered Owner. Any successor Registrar appointed by the City shall, immediately and without further act, be superseded by a Registrar appointed by such Registered Owner. If in a proper case no appointment of a successor Registrar shall be made within forty-five (45) days after the Registrar shall have given to the City written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Registered Owner may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this Section 4.08 shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

SECTION 4.09. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys and books held by it to its successor.

SECTION 4.10. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; Provided, however, That such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 4.08.

SECTION 4.11. Adoption of Authentication. In case any of the Series 2005 Bonds shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver such Series 2005 Bonds so authenticated, and, in case any Series 2005 Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Series 2005 Bonds in the name of the predecessor Registrar or in its own name.

SECTION 4.12. Paying Agent. The Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Paying Agent in connection with such services solely from moneys available therefor.

Any bank, trust company or national banking association with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Ordinance. If the position of Paying Agent shall become vacant for any reason, the City shall, within thirty (30) days thereafter, appoint a bank, trust company or national banking association to fill such vacancy; Provided, however, That, if the City shall fail to appoint such Paying Agent within said period, the Commission, a court of competent jurisdiction or a majority of the Bondholders may make such appointment.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in this Article IV with respect to the Registrar, insofar as such provisions may be applicable.

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 4.08 hereof with respect to the appointment of a successor Registrar.

All moneys received by the Paying Agents shall, until used or applied as provided in the Ordinance, be held in trust for the purposes for which they were received.

## ARTICLE V

## ADDITIONAL COVENANTS OF THE CITY

SECTION 5.01. General Covenants of the City. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the City and shall be enforceable in any court of competent jurisdiction by any Registered Owners of said Bonds. In addition to the other covenants, agreements and provisions of this Ordinance, the City hereby covenants and agrees with the Registered Owner or Owners of said Bonds in the manner provided in this Article V. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon, are Outstanding and unpaid.

SECTION 5.02. The Note and the Bonds Not to be Indebtedness of the City. The Note and the Series 2005 Bonds shall not be or constitute an indebtedness of the City, within the meaning of any constitutional statutory or charter limitation of indebtedness, but shall be payable solely from the Net Revenues of the Parking System, as herein provided. No Registered Owner of any Bond issued hereunder shall ever have the right to compel the exercise of the taxing power of the City, to pay said Bonds or the interest thereon.

SECTION 5.03. Bonds Secured By Pledge of Net Revenues; Note is Not Secured by Revenues of the Parking System. The payment of the debt service of all of the bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the Parking System to the extent necessary to make the payments required under this Ordinance. The Net Revenues derived from the Parking System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized, and to make the payments into the Sinking Fund, including the Reserve Account therein, and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance, to the payment of the principal of and interest on the Bonds herein authorized as the same become due, and for the other purposes provided in this Ordinance. The Note is not secured by the Net Revenues of the Parking System.

SECTION 5.04. Statutory Mortgage Lien Created. The Registered Owners of the Bonds issued pursuant to this Ordinance shall have a statutory mortgage lien upon the Parking System pursuant to the provisions of Section 22 of the Bond Act, which statutory mortgage lien shall exist in favor of, and shall be enforceable in any lawful manner by, the Registered Owners of the Series 2005 Bonds, and each of them, and the Parking System shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest on the Bonds issued pursuant to this Ordinance. The statutory mortgage lien shall be a first mortgage on said Parking System, and the City shall not place any other mortgage or encumbrance on said Parking System, or any part thereof.

SECTION 5.05. Rates. The City will fix, establish and maintain such rates and collect such fees, rentals or other charges for the services and facilities of said Parking

System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year at least sufficient to pay, one hundred fifteen per centum (115%) of the largest amount of principal and interest maturing and becoming due on said Bonds then Outstanding in any succeeding fiscal year, in addition to paying, as the same shall become due, the necessary expense of repair (including replacement), maintenance and operation of said Parking System in each fiscal year, and all obligations or indebtedness other than the Bonds payable out of revenues of said Parking System in such fiscal year, and that such rates, fees, rentals or other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

SECTION 5.06. Operation and Maintenance. The City will maintain the Parking System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said Parking System in the manner provided in this Ordinance.

SECTION 5.07. Sale of the Parking System. The City will not voluntarily sell, mortgage or otherwise dispose of or encumber the Parking System or any property essential to the proper operation thereof while any of the Bonds herein authorized are Outstanding except for leases or sales of space therein designed for sale or lease for commercial, business or charitable uses; provided, however, that the City may sell all or any portion the Parking System if the City shall receive from such sale moneys adequate to fully defease all of the Outstanding Series 2005 Bonds and any additional bonds issued hereunder in accordance with the provision in Section 9.01 hereof; and further provided that the City may sell or otherwise dispose of a portion of the Parking System only following a receipt of a certificate from an Independent Accountant to the effect that the Net Revenues for the remaining unsold portion of the Parking System are sufficient to meet the requirements of Section 5.05 hereof. Any proceeds received from the sale of a portion of the Parking System shall be deposited with the Commission and used to redeem Series 2005 Bonds, in inverse order, on the next available redemption date.

SECTION 5.08. Issuance of Other Obligations Payable Out of Revenues. The City will not issue any other obligations for any purpose, payable from the revenues derived from the operation of said Parking System, except parity additional Bonds provided for in Section 5.09 hereof, nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or any other charge which will have priority to or be on a parity with the lien of the Bonds issued pursuant to this Ordinance and interest thereon, upon any of the income and revenues of said Parking System, or any part thereof. Any other obligations hereafter issued by the City, payable from such revenues, except such parity additional Bonds, shall contain an express statement that such obligations are junior, subordinate and inferior to the Bonds issued pursuant to this Ordinance as to lien and source and security for payment from the revenues of said Parking System, and in all other respects.

SECTION 5.09. Issuance of Parity Additional Bonds. No parity additional Bonds as in this subsection defined, payable out of the revenues of the Parking System, shall be

created after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

No such parity additional Bonds shall be issued unless the Net Revenues derived from the Parking System during any twelve (12) consecutive months during the period of eighteen (18) months immediately prior to the issuance of the additional Bonds then proposed to be issued, as set forth in a certificate of an Independent Accountant, appointed by the City, filed with the City Clerk, shall be not less than one hundred fifteen per centum (115%) of the largest amount of principal and interest which will mature and become due in any succeeding year on the Bonds issued pursuant to this Ordinance then Outstanding and on any parity additional Bonds theretofore issued and then Outstanding, and on any other obligations then Outstanding which are payable from the revenues of said Parking System, or any part thereof, and on the parity additional Bonds then proposed to be issued; provided, however, that if the parity additional bonds are refunding bonds to achieve a debt service savings, then such test shall not apply.

Such parity additional Bonds shall be issued only for the financing of the construction and acquisition of additions, extensions and improvements to the Parking System, and all revenues derived therefrom shall be deposited in the Revenue Fund created by this Ordinance or for refunding all or any part of any Bonds Outstanding hereunder.

The term "parity additional Bonds" as used in this subsection, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this subsection, payable from the Parking System on parity with Bonds originally authorized and issued pursuant to this Ordinance. Such parity additional Bonds shall be deemed to have been issued pursuant to this Ordinance, and all of the covenants, agreements and other provisions of this Ordinance (except as to details of such parity additional Bonds inconsistent therewith) shall be for the equal benefit, protection and security of the Registered Owners of any Bonds originally authorized and issued pursuant to this Ordinance and the holders of any parity additional Bonds subsequently created within the limits of and in compliance with this subsection. All of such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of said Parking System and their source and security for payment from said revenues without preference of any Bond, over any other. The City shall comply fully with all the increased payments into the various funds created in this Ordinance required for such parity additional Bonds, in addition to the payments required for Bonds originally issued pursuant to this Ordinance.

The term "parity additional Bonds", as used in this subsection shall not be deemed to include bonds, notes, certificates, or any other obligations subsequently issued, the lien of which on the revenues of the Parking System, or any part thereof, is subject to the prior and superior lien on such revenues of the Bonds issued pursuant to this Ordinance, and the City shall not issue any obligations whatsoever payable from the revenues of said Parking System, or for payment from such revenues with Bonds issued pursuant to this Ordinance, except in the manner and under the conditions provided in this Section 5.09.

No parity additional Bonds, as in this subsection defined, shall be created at any time, however, unless all of the payments into the respective funds provided for in this Ordinance shall have been made in full to the date of issuance of such parity additional Bonds, and the City shall have fully complied with all covenants, agreements and terms of this Ordinance.

SECTION 5.10. Insurance. The City will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the Parking System with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, flood, cyclone, occupancy or other hazards and risks, which insurance shall at all times be in an amount or amounts equal to the fair appraisal value of the buildings, properties, furniture, fixtures, and equipment of said Parking System. 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 City shall 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 Parking System.

SECTION 5.11. Books and Records. The City will keep books and records of the Parking 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 Parking System, and any Registered Owner of a Bond or Bonds issued pursuant to this Ordinance shall have the right at all reasonable times to inspect the Parking System and all parts thereof, and all records, accounts and data of the City relating thereto.

The accounting system for the Parking System shall follow generally accepted accounting principles and safeguards. Subsidiary records as may be required shall be kept in the manner, on the forms, books, and 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 of the City shall direct. The City Treasurer of the City shall prescribe the forms and manner for depositing with said City Treasurer all sums due the City from the operation of its Parking System.

The City shall file with the Original Purchaser, and shall mail in each year to any Registered Owner or Owners of Bonds requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses and Net Revenues derived from the Parking System.

(B) A balance sheet statement showing all deposits in all the funds provided for in this Ordinance, and the status of all said funds.

The City shall also, at least once a year, cause the books, records and accounts of the Parking System to be completely audited by the State Tax Commissioner or any successor to that function or by an Independent Accountant, and shall mail upon request, and make available generally, the audit report, or a summary thereof, to any Registered Owner or Owners of Bonds issued pursuant to this Ordinance who has so requested in writing.

SECTION 5.12. Services Rendered to the City. The City will not render or cause to be rendered any free parking or services of any nature by the Parking System, nor will any preferential rates be established for users thereof of the same class; and in the event the City shall authorize any board, department, agency, instrumentality, officer or employee of said City to avail itself or themselves of the facilities or services provided by the Parking System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like service under similar circumstances shall be charged said City, board, department, agency, instrumentality, officer or employee of said City, and such charges shall be paid as they accrue, and the City shall transfer from its general funds sums sufficient to pay such charges. The revenues so received shall be deemed to be revenues derived from the operation of the Parking System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the Parking System.

SECTION 5.13. Annual Operating Budget. The City shall include in its annual budget adopted prior to the beginning of each Fiscal Year, and as a separate part thereof, a detailed estimate of the expenditures for operation and maintenance of the Parking System during such succeeding fiscal year. No expenditures for the operation and maintenance of the Parking System shall be made in any fiscal year in excess of the amount provided therefor in such budget without a written finding and recommendation by the general manager of such Parking System or other duly authorized officer in charge thereof, which finding and recommendation shall state in detail the purpose of and necessity for such additional expenditures for the operation and maintenance of the Parking System, and no such additional expenditures shall be made until the City Council shall have approved such finding and recommendation and shall have authorized such additional expenditures by a resolution duly adopted. No additional expenditures in excess of ten per centum (10%) of the amount of such budget shall be made except upon the further certificate of the Parking Facilities Committee that such additional expenditures are necessary for the continued operation of said Parking System.

SECTION 5.14. Enforcement of Collection. The City will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the Parking 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 charter of said City and by laws of the State.

SECTION 5.15. Relocation of Parking Meters. The City will maintain parking meters on all streets where such parking meters are located and maintained on the date of enactment of this Ordinance and will not remove or relocate said parking meters unless such removal or relocation shall be recommended and approved by the officials of the City having

authority to designate the location of parking meters, where such removal, relocation or substitution will materially lessen the revenues obtained from the operation of said parking meters. The covenant hereinabove contained in this Section 5.15 shall not be construed so as to prevent the removal or relocation of parking meters where such removal or relocation is made necessary by street widening or street crossings nor shall said covenant prevent the substitution, removal, relocation or change in location of parking meters necessary, essential and required for proper traffic regulations and control.

SECTION 5.16. Schedule of Rates. The rates, rentals, fees and other charges for the use of the services and facilities of said Parking System, established under an ordinance of the City enacted on the same date as the adoption of a resolution or ordinance adopted in connection with the sale of Bonds as provided in Article 2 of this Ordinance, shall constitute the initial schedule of rates for said Parking System.

The City further covenants that rates, rentals, fees or other charges will be charged and collected as long as the Bonds issued hereunder, and the interest thereon are outstanding and unpaid, on all metered On-Street and Off-Street Parking Facilities for which rates, fees, rentals or other charges are now fixed, established and collected; and on any additional metered On-Street or Off-Street Parking Facilities for which parking meters are hereafter acquired and installed in or on the streets of the City.

Said initial schedule of rates shall not be reduced, nor shall any subsequent schedule of rates be at any time reduced, unless the following conditions have been complied with:

(1) That all current payments, including any deficiencies for prior payments into all the funds provided for in this Ordinance have been made in full to the end of the then Fiscal Year.

(2) That an Independent Accountant shall certify that the proposed new schedule of rates will in each year thereafter produce sufficient Net Revenues, as defined herein, from said Parking System to equal one hundred fifteen per centum (115%) of the largest amount of principal of and interest on said Bonds which will mature and become due in any ensuing year, and on any parity additional Bonds theretofore issued and then Outstanding, or if it is then proposed that parity additional Bonds be issued, to equal one hundred fifteen centum (115%) of the largest amount of principal of and interest on said Bonds which will mature and become due in any ensuing year, and on any parity additional Bonds theretofore issued and then Outstanding and those proposed to be issued, and in either event, 115% of any other obligations then Outstanding which are payable from the Net Revenues of the Parking System.

SECTION 5.17. No Competing Facilities. The City hereby irrevocably covenants that it will not construct or acquire any on-street or off-street parking facilities for which no fees or other charges are fixed, established and collected and which will be competitive with the On-Street or Off-Street Parking Facilities of said Parking System; Provided, That the City

may designate certain streets or areas of the City as special parking areas upon a certification from the Parking Facilities Committee that (1) such special designated parking area is not competing with the Parking System, (2) that the City is current on all payments required hereunder, and (3) that the number of spaces in such areas do not exceed 2% of the total parking spaces in the Parking System. Notwithstanding the provisions set forth above, the City may from time to time offer promotional free parking in designated areas, provided that no such promotions shall exceed 30 consecutive days, and the City may from time to time provide special event parking rates.

SECTION 5.18. Tax Covenants. The City hereby further covenants and agrees as follows:

A. PUBLIC PURPOSE BONDS. The Parking System will be solely operated as a public purpose and as local governmental activity of the City.

B. PRIVATE BUSINESS USE LIMITATION. The City shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2005 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2005 Bonds during the term thereof is, under the terms of the Series 2005 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2005 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2005 Bonds during the term thereof is, under the terms of the Series 2005 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2005 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the System, or if the Series 2005 Bonds are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The City shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 2005 Bonds or $5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The 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 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The City will file all statements, instruments and returns necessary to assure the tax exempt status of the Bonds, including without limitation the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The City will take any and all actions that may be required of it so that the interest on the 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 which would adversely affect such exclusion.

SECTION 5.19. Right to Amend Ordinance. The City retains the right to make any amendments, insertions or deletions by Supplemental Resolution to this Ordinance as the City deems desirable or necessary prior to the issuance of the Bonds, including but not limited to amendments, insertions or deletions to comply with the Code. Notwithstanding the provisions of Section 9.01 hereof, the City through City Council shall without consent of the Registered Owners of the Bonds amend or supplement this Ordinance by resolutions supplemental hereto or any amendatory ordinance to comply with the Code if such amendment or supplement is necessary to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes. In making its determination to amend or supplement this Ordinance, the City Council may rely on the opinion of a nationally recognized bond counsel.

Prior to the issuance of Series 2005 Bonds, the City also retains the right to make any amendments, insertions or deletions by Supplemental Resolution of this Ordinance as the City deems necessary prior to the issuance of the Bonds to meet the requirements of the Original Purchaser.

SECTION 5.20. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Paying Agent and the Registered Owners of the Bonds, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Paying Agent and the Registered Owners of the Bonds.

SECTION 5.21. Covenants Regarding the Municipal Bond Insurance Policy. The City may obtain a Municipal Bond Insurance Policy for the Series 2005 Bonds. In the event such a Municipal Bond Insurance Policy is obtained, certain additional covenants of the City may be required by the Bond Insurer as a condition to insuring the Series 2005 Bonds. These additional covenants shall be set forth in full in the Supplemental Resolution, shall apply to the Series 2005 Bonds and shall be controlling in the event any other provisions of this Ordinance may be in conflict therewith.

SECTION 5.22. Parking Facilities Committee. The Parking Facilities Committee created pursuant to the Original Ordinance is hereby continued and shall be composed of the Mayor and the members of City Council's Finance Committee.

SECTION 5.23. Continuing Disclosure. The City shall deliver a continuing disclosure agreement or certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as it may be amended from time to time.

## ARTICLE VI

## APPLICATION OF NOTE AND SERIES 2005 BOND PROCEEDS

SECTION 6.01. Disposition of Proceeds of Note. Upon issuance and delivery of the Note, the City shall deposit into the Series 1993 Escrow Fund an amount which, together with other moneys or securities deposited therein and the earnings therein, shall be sufficient to accomplish the refunding and defeasance of the Series 1993 Bonds (which amount shall be set forth in the Escrow Agreement), fund the Note Reserve Account and fund the Cost of Issuance Fund.

SECTION 6.02. Disposition of Proceeds of Series 2005 A Bonds. Upon the issuance and delivery of the Series 2005 A Bonds, the City shall forthwith deposit the proceeds thereof as follows:

A. All interest accrued on the Series 2005 A Bonds from the date thereof to the date of delivery thereof shall be deposited in the Sinking Fund for the Series 2005 A Bonds and applied to payment of interest on the Series 2005 A Bonds at the first interest payment date.

B. An amount of the proceeds of the Series 2005 A Bonds which, together with other moneys or securities deposited therein and the earnings thereon, shall be sufficient to accomplish the refunding and defeasance of the Series 1994 and Series 1995 Bonds (which amount shall be set forth in the Escrow Agreement) shall be deposited in the Escrow Fund.

C. An amount of the proceeds of the Series 2005 Bonds equal to the Reserve Requirement for the Series 2005 A Bonds shall be remitted to the Commission for deposit in the Reserve Accounts for the Series 2005 A Bonds.

D. The balance of the proceeds of the Series 2005 A Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the City solely to pay costs of issuance of the Series 2005 A Bonds and miscellaneous costs of refunding the Prior Bonds at the written direction of the City. All such costs of issuance shall be paid within 60 days of the Closing Date. Moneys not to be applied immediately to pay such costs of issuance and refunding may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the City to the Redemption Accounts for the Series 2005 A Bonds. All such

proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such moneys until so applied in favor of the Registered Owners of the Series 2005 A Bonds.

SECTION 6.03. Conversion of Note to Series 2005 B Bonds. Following the issuance and delivery of the Series 2005 A Bonds and is as more specifically set forth in a resolution supplemental hereto, the Note shall be tendered to the City and the City shall deliver the converted Series 2005 B Bonds.

## ARTICLE VII

## INVESTMENTS; NON-ARBITRAGE

SECTION 7.01. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the City in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 7.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the City, at least once each year, or more often as 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 2005 Bonds are Outstanding and as long thereafter as necessary to comply with the Code and to assure the exclusion of interest on the Series 2005 Bonds from gross income for federal income tax purposes.

SECTION 7.02. Arbitrage. The City covenants that (i) it will restrict the use of the proceeds of the Series 2005 Bonds in such manner and to such extent as may be necessary, so that the Series 2005 Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and the Regulations prescribed thereunder, 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 2005 Bonds) so that the interest on the Series 2005 Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

SECTION 7.03. Tax Certificate and Rebate. The 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 2005 Bonds. In addition, the City covenants to comply with all Regulations from time to time in effect and applicable to the Series 2005 Bonds as may be necessary in order to 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 this Ordinance.

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, the City shall deposit, or cause to be deposited, in the respective Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in such Rebate Funds 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, such Rebate Funds shall be held free and clear of any lien or pledge hereunder 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 such Rebate Funds, 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 such Rebate Funds 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 such Rebate Funds 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. The City at its expense, 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 7.03. The City shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 7.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the City fails to make such rebates as required, the City shall pay the required rebate amounts and any and all penalties and interest from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Series 2005 Bonds from gross income for federal income tax purposes.

## ARTICLE VIII

## DEFAULTS AND REMEDIES

SECTION 8.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds.

(A) If default occurs in the due and punctual payment of the principal of or interest on any Bonds;

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Ordinance, the Supplemental Resolution or in the Bonds and such default shall have continued for a period of 30 days after the City shall have been given written notice of such default by the Depository Bank holding any fund or account hereunder or a Registered Owner of a Bond; or

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

SECTION 8.02. Remedies. Any Registered Owner of Bonds issued under the provisions of this Ordinance or any trustee acting for such Bondholders in the manner hereinafter provided, may either at law or in equity, by suit, action, mandamus or other proceeding at any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted and contained in this Ordinance, and may enforce and compel the performance of all duties required by this Ordinance or by any applicable statutes to be performed by the City or by any officer thereof, including the fixing, charging and collecting of rates, fees, rentals or charges for the services and facilities of the Parking System.

In the event that default shall be made in the payment of the interest on or the principal of any of the Bonds issued pursuant to this Ordinance as the same shall become due, or in the making of the payments into any reserve or sinking fund or any other payments required to be made by this Ordinance, or in the event that the City or any officer, agent or employee thereof shall fail or refuse to comply with provisions of this Ordinance, or shall default in any covenant made herein, and in the further event that any such default shall continue for a period of thirty days, any Registered Owner of such Bonds or any trustee appointed to represent Bondholders as hereinafter provided shall be entitled as of right to appointment of a receiver of the Parking System in an appropriate judicial proceeding in a court of competent jurisdiction, whether or not such Registered Owner or trustee is also seeking or shall have sought to enforce any other right or exercise any other remedy in connection with Bonds issued pursuant to this Ordinance.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of said Parking 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 shall exercise all the rights and powers of the City with respect to said

facilities as the City itself might do. Such receiver shall collect and receive all revenues, maintain and operate such facilities in the manner provided in this Ordinance and comply under the jurisdiction of the court appointing such receiver, with all of the provisions of this Ordinance.

Whenever all that is due upon the Bonds issued pursuant to this Ordinance and interest thereon, and under any covenants of this Ordinance for reserve, sinking or other funds, and upon any other obligations and interest thereon, having a charge, lien or encumbrance upon the revenues of the Parking 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 Parking System shall be surrendered to the City upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of Bonds issued pursuant to this Ordinance, or any trustee appointed for Bondholders as hereinafter provided, shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver shall in the performance of the powers hereinabove conferred upon him 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 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 Parking System in the name of the City and for the joint protection and benefit of the City and Registered Owners of Bonds issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging to pertaining to the Parking System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the Parking System, for the sole purpose of the protection of both the City and Bondholders, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said Parking System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the Parking System.

The Registered Owner or Owners of Bonds in an aggregate principal amount of not less than twenty-five per centum (25%) of Bonds issued under this Ordinance then Outstanding may be a duly executed certificate in writing appointing a trustee for Registered Owners of Bonds issued pursuant to this Ordinance with authority to represent such Bondholders in any legal proceedings for the enforcement and protection of the rights of such Bondholders. Such certificate shall be executed by such Bondholders or their duly authorized attorneys or representatives, and shall be filed in the office of the City Clerk.

## ARTICLE IX

## DEFEASANCE OF BONDS

SECTION 9.01. Defeasance of Bonds. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the respective Registered Owners of all the Series 2005 Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then this Ordinance and the pledges of the Net Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the City on behalf of the Registered Owners of the Series 2005 Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied, except as may be necessary to assure the exclusion of interest on the Series 2005 Bonds from gross income for federal income tax purposes.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or an escrow trustee either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on said Bonds on and prior to the maturity date thereof, or if the City irrevocably determines to redeem any of said Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the Commission or an escrow trustee pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the City as received by the Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations or such additional securities as shall be set forth in the Supplemental Resolution.

## ARTICLE X

## MISCELLANEOUS

SECTION 10.01. Amendment of Ordinance. Prior to issuance of the Series 2005 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. All provisions required by the Bond Insurer, if any, shall be set forth in the Supplemental Resolution and to the extent they constitute an amendment or modification of this Ordinance, shall be controlling. Following issuance of the Series 2005 Bonds, this Ordinance and any Supplemental Resolution may be amended or modified without the consent of any Registered Owner or other person, solely for the purpose of maintaining the tax-exempt status of the Series 2005 Bonds, provided that, in the event any of the Bonds are insured, no such amendment or modification which adversely affects the security for such Bonds or the rights of the applicable Bond Insurer for such Bonds may be effected without the written consent of such Bond Insurer. Otherwise, no materially adverse amendment or modification to this Ordinance, or of any Supplemental Resolution, may be made without the written consent of the Registered Owners of the Bonds then Outstanding and affected thereby and the Bond Insurer. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Bond without the express written consent of the Registered Owner of such Bond, nor reduce the percentage of Bonds required for consent to any such modification or amendment.

SECTION 10.02. Evidence of Signatures of Registered Owners and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Ordinance may require or permit to be signed and executed by Registered Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Registered Owners in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, shall be sufficient for any purpose of this Ordinance if made in the following manner, or in any other manner satisfactory to the City or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

A. The fact and date of the execution by any Registered Owner or his attorney of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, a trust company or a financial firm or corporation satisfactory to the City or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate Registered Owner may be established without further proof if such

instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of such corporation with a corporate seal affixed, and is attested by a person purporting to be its secretary or assistant secretary.

C. The amount of fully registered Bonds held by a person executing any instrument as a Registered Owner, the date of his holding such Bonds and the numbers and other identification thereof, shall be confirmed by the Bond Register.

Any request, consent or other instrument executed by the Registered Owner of any Bond shall bind all future Registered Owners and owners of such Bond in respect of anything done or suffered to be done hereunder by the City or the Registrar in accordance therewith.

SECTION 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the City or any Registered Owner, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Ordinance shall be discharged as provided in Section 9.01.

SECTION 10.04. Cancellation of Bonds. All Bonds purchased or paid shall, if surrendered to the City, be canceled and delivered to the Registrar, or, if surrendered to the Registrar, be canceled by it. No such Bonds shall be deemed Outstanding under this Ordinance and no Bonds shall be issued in lieu thereof. All such Bonds shall be canceled and upon order of the City shall be destroyed, and a certificate evidencing such destruction shall be delivered to the City.

SECTION 10.05. Failure to Present Bonds. Anything in this Ordinance to the contrary notwithstanding, any moneys held by the Commission or a Paying Agent in trust for the payment and discharge of any of the Bonds which remain unclaimed for 1 year after the date on which such Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the City be paid by the Commission or said Paying Agent to the City as its absolute property and free from trust, and the Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Registered Owners of such Bonds shall look only to the City for the payment of such Bonds; provided, however, that, before making any such payment to the City, the Registrar, if so advised by the Commission, or said Paying Agent shall send to the Registered Owners, at the address listed on the Bond Register, by certified mail, a notice that such moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the City.

SECTION 10.06. No Personal Liability. No member, officer or employee of the City shall be individually or personally liable for the payment of the principal of or the interest on any Bond, but nothing herein contained shall relieve any such member, officer or employee from the performance of any official duty provided by law or this Ordinance.

SECTION 10.07. Law Applicable. The laws of the State shall govern the construction of this Ordinance and of all Bonds issued hereunder.

SECTION 10.08. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Original Purchaser, any right, remedy or claim under or by reason of this Ordinance. All the covenants, stipulations, promises and agreements contained in this Ordinance by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Registrar, the Paying Agent, the Registered Owners of the Bonds and the Original Purchaser.

SECTION 10.09. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

SECTION 10.10. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

SECTION 10.11. Conflicting Provisions Repealed. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed; provided that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are outstanding.

SECTION 10.12. Covenant of Due Procedure, Etc. 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 adoption 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, City Clerk and members of the Council were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

SECTION 10.13. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance in the form set forth in Exhibit A attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least six full days intervening between each publication, in the Charleston Gazette and

Charleston Daily Mail, two 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 2005 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 10.14. Effective Date. This Ordinance shall take effect immediately following the public hearing and final reading hereon.

**EXHIBIT A**

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 _____, 2005, the Council of The City of Charleston, West Virginia (the "City") adopted an ordinance which, among other things:

1. Authorized the refunding of the Parking System Refunding Revenue Bonds, Series 1993, the Parking System Revenue Bonds, Series 1994 A, the Parking System Subordinate Revenue Bonds, Series 1994 B and the Parking System Subordinate Revenue Bonds, Series 1995 A of The City of Charleston; authorized the issuance of not more than $3,500,000 in Parking System Bond Anticipation Notes; authorized the issuance of not more than $12,885,000 in aggregate principal amount of Parking System Refunding Revenue Bonds, Series 2005 A and Series 2005 B, of The City of Charleston (collectively, the "2005 Bonds"), 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 finance the cost of such refunding, to fund reserve accounts for such bonds and to pay other costs in connection therewith; provided for the rights and remedies of and security for the registered owners of such bonds, all with respect to the City's Parking System (the "System").

2. Directed that the 2005 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.

3. 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 2005 Bonds.

4. Provided that the 2005 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 2005 Bonds and established the rights of the registered owners of the Bonds to such Net Revenues.

5. Provided certain conditions for the issuance of additional bonds.

6. Established the events of default and the remedies of the registered owners.

The City contemplates the issuance of the 2005 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 regular meeting on _____, 2005, 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 _____, 2005, 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 -- The City of Charleston, West Virginia

THE CITY OF CHARLESTON, WEST VIRGINIA

PARKING SYSTEM REFUNDING NOTE AND BOND ORDINANCE

INDEX OF ORDINANCE


Page

ARTICLE I - DEFINITIONS, STATUTORY AUTHORITY, AND FINDINGS

Section 1.01. Definitions ..... 1
Section 1.02. Authority for this Ordinance ..... 10
Section 1.03. Findings ..... 11
Section 1.04. Ordinance Constitutes Contract ..... 13

ARTICLE II - AUTHORIZATION OF REFUNDING AND REDEMPTION; AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF THE NOTE AND THE BONDS

Section 2.01A. Authorization of Refunding and Redemption of the Series 1993 Bonds ..... 14
Section 2.01B. Authorization of Refunding and Redemption of the Series 1994 and Series 1995 Bonds ..... 14
Section 2.02A. Authorization and Terms of Note ..... 15
Section 2.02B. Authorization and Terms of Series 2005 Bonds ..... 15
Section 2.03. Execution of Bonds ..... 16
Section 2.04. Authentication and Registration ..... 16
Section 2.05. Book-Entry System for Bonds ..... 16
Section 2.06. Negotiablilty, Transfer and Registration ..... 18
Section 2.07. Notes and Bonds Mutilated, Destroyed, Stolen or Lost .... 19
Section 2.08. Term Bonds ..... 19
Section 2.09. Bonds Secured by Pledge of Net Revenues; Not to be Indebtedness of the City; Note is Not Secured by Revenues of the Parking System ..... 21
Section 2.10. Notice of Redemption ..... 21
Section 2.11. Form of Bonds ..... 22

ARTICLE III - PARKING SYSTEM REVENUES AND APPLICATION THEREOF

Section 3.01. Establishment of Funds and Accounts with Depository Bank ..... 23
Section 3.02. Disposition of Parking System Revenues ..... 24
Section 3.03. Reserve Account Letter of Credit or Surety Bond ..... 27
Section 3.04. Repair, Maintenance and Operation Fund ..... 28

ARTICLE IV - REGISTRAR; PAYING AGENT

Section 4.01. Appointment of Registrar ..... 29

| | | |
|---|---|---|
| Section 4.02. | Responsibilities of Registrar | 29 |
| Section 4.03. | Evidence on Which Registrar May Act | 29 |
| Section 4.04. | Compensation and Expenses | 29 |
| Section 4.05. | Certain Permitted Acts | 29 |
| Section 4.06. | Resignation of Registrar | 30 |
| Section 4.07. | Removal | 30 |
| Section 4.08. | Appointment of Successor | 30 |
| Section 4.09. | Transfer of Rights and Property to Successor | 30 |
| Section 4.10. | Merger or Consolidation | 31 |
| Section 4.11. | Adoption of Authentication | 31 |
| Section 4.12. | Paying Agent | 31 |

ARTICLE V - ADDITIONAL COVENANTS OF THE CITY

| | | |
|---|---|---|
| Section 5.01. | General Covenants of the City | 32 |
| Section 5.02. | The Note and the Bonds Not to be Indebtedness of the City | 32 |
| Section 5.03. | Bonds Secured By Pledge of Net Revenues; Note is Not Secured by Revenues of the Parking System | 32 |
| Section 5.04. | Statutory Mortgage Lien Created | 32 |
| Section 5.05. | Rates | 32 |
| Section 5.06. | Operation and Maintenance | 33 |
| Section 5.07. | Sale of the Parking System | 33 |
| Section 5.08. | Issuance of Other Obligations Payable Out of Revenues | 33 |
| Section 5.09. | Issuance of Parity Additional Bonds | 33 |
| Section 5.10. | Insurance | 35 |
| Section 5.11. | Books and Records | 35 |
| Section 5.12. | Services Rendered to the City | 36 |
| Section 5.13. | Annual Operating Budget | 36 |
| Section 5.14. | Enforcement of Collection | 36 |
| Section 5.15. | Relocation of Parking Meters | 36 |
| Section 5.16. | Schedule of Rates | 37 |
| Section 5.17. | No Competing Facilities | 37 |
| Section 5.18. | Tax Covenants | 38 |
| Section 5.19. | Right to Amend Ordinance | 39 |
| Section 5.20. | Parties Interested Herein | 39 |
| Section 5.21. | Covenants Regarding the Municipal Bond Insurance Policy | 39 |
| Section 5.22. | Parking Facilities Committee | 39 |
| Section 5.23. | Continuing Disclosure | 40 |

ARTICLE VI- APPLICATION OF NOTE AND SERIES 2005 BOND PROCEEDS

Section 6.01. Disposition of Proceeds of Note ..... 41
Section 6.02. Disposition of Series 2005 A Bonds ..... 41
Section 6.03. Conversion of Note to Series 2005 B Bonds ..... 41

ARTICLE VII - INVESTMENTS; NON-ARBITRAGE

Section 7.01. Investments ..... 43
Section 7.02. Arbitrage ..... 43
Section 7.03. Tax Certificate and Rebate ..... 44

ARTICLE VIII - DEFAULTS AND REMEDIES

Section 8.01 Events of Default ..... 45
Section 8.02. Remedies ..... 45

ARTICLE IX- DEFEASANCE OF BONDS

Section 9.01. Defeasance of Bonds ..... 47

ARTICLE X - MISCELLANEOUS

Section 10.01. Amendment of Ordinance ..... 48
Section 10.02. Evidence of Signatures of Registered Owners and Ownership of Bonds ..... 48
Section 10.03. Preservation and Inspection of Documents ..... 49
Section 10.04. Cancellation of Bonds ..... 49
Section 10.05. Failure to Present Bonds ..... 49
Section 10.06. No Personal Liability ..... 50
Section 10.07. Law Applicable ..... 50
Section 10.08. Parties Interested Herein ..... 50
Section 10.09. Severability of Invalid Provisions ..... 50
Section 10.10. Table of Contents and Headings ..... 50
Section 10.11. Conflicting Provisions Repealed ..... 50
Section 10.12. Covenant of Due Procedure, Etc. ..... 50
Section 10.13 Statutory Note and Public Hearing ..... 50
Section 10.14 Effective Date ..... 51

Exhibit A - Abstract and Notice

**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 No. 765-05, enacted by the City Council of the City of Charleston on February 7, 2005.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 28th day of March, 2005.

James M. Reishman
City Clerk

Seal

**Resolution No. 765-05**

**Introduced in Council:**

**February 7, 2005**

**Adopted by Council:**

February 7, 2005

**Introduced by:**

**Robert S. Reishman**

**Referred to:**

**Finance Committee**

**Resolution No. 765-05:**

A resolution supplementing Ordinance No. 7123 passed by the Council of The City of Charleston on January 18, 2005, authorizing the refunding of the Parking System Refunding Revenue Bonds, Series 1993, the Parking System Revenue Bonds, Series 1994 A, the Parking System Subordinate Revenue Bonds, Series 1994 B and the Parking System Subordinate Revenue Bonds, Series 1995 A of The City of Charleston; authorizing the issuance of not more than $2,885,000 in Parking System Bond Anticipation Notes; authorizing the issuance of not more than $12,885,000 in aggregate principal amount of Parking System Refunding Revenue Bonds, Series 2005 A and Series 2005 B, 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 finance the cost of such refunding, to fund reserve accounts 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" or the "Issuer"), on January 18, 2005, adopted Ordinance No. 7123, which Ordinance authorized the issuance of The City of Charleston Parking System Bond Anticipation Notes (the "Notes"), The City of Charleston (West Virginia) Parking System Refunding Revenue Bonds, Series 2005 A (the "Series 2005 A Bonds") and Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds" and collectively, the "Series 2005 Bonds"), in an aggregate principal amount not to exceed $12,885,000, to finance the cost of refunding the Parking System Refunding Revenue Bonds, Series 1993 and the Parking System Revenue Bonds, Series 1994 A, the Parking System Subordinate Revenue Bonds, Series 1994 B and the Parking System Subordinate Revenue Bonds, Series 1995 A, (collectively, the "Series 1994/1995 Bonds"), to fund reserve accounts for the Series 2005 Bonds and to pay other costs in connection therewith, 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 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 Issuer contemplates the issuance of the Notes and the Series 2005 Bonds 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 once a week for two successive weeks, with at least six full days intervening between each publication in the Charleston Gazette and Charleston Daily Mail, two qualified newspapers published and of general circulation in the City of Charleston, West Virginia, 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 interest persons may appear before the City Council and present protests;

WHEREAS, the Abstract and Notice was published on January 28, 2005 and February 4, 2005;

WHEREAS, the Notice provided for a public hearing to be held before City Council at 7:00 p.m. on Monday, February 7, 2005, in the Council Chambers, City Hall, Charleston, West Virginia, which hearing was held and no protests were received;

WHEREAS, the Ordinance provides that matters relating to the Notes and the Series 2005 Bonds not set forth in the Ordinance shall be approved by a resolution supplemental thereto (the "Supplemental Resolution");

WHEREAS, the Notes and the Bonds are proposed to be purchased by Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (the "Original Purchasers"), pursuant to two or more Bond/Note Purchase Agreements (the "Purchase Agreement") between the Original Purchasers and the City;

WHEREAS, this Council wishes to delegate to the Mayor the authority to approve, within the parameters set forth herein, the final terms of the Notes and the Series 2005 Bonds, including the exact principal amount, interest rates, redemption provisions, maturities, purchase price and other terms of the Notes and the Series 2005 Bonds as set forth in the form of the Certificate of Determination attached hereto, without the requirement of further official action by this Council; and

WHEREAS, this City Council deems it essential and desirable that this Supplemental Resolution be adopted, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Notes and Series 2005 B

Bonds be fixed as stated herein, that the principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Notes and the Series 2005 A Bonds be fixed by the Mayor, by and through the execution of Certificates of Determination, within the parameters fixed 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:

1. It is hereby found and determined:

(a) The Abstract and Notice were duly published in the The Charleston Gazette and The Daily Mail, newspapers of general circulation in The City of Charleston, West Virginia, with the first publication thereof being on January 28, 2005, and with the last publication thereof being on February 4, 2005, and a copy of the affidavit of publication reflecting such publication is attached hereto and incorporated herein as EXHIBIT A;

(b) In accordance with the Ordinance and the Notice, a copy of the Ordinance was maintained at the Office of the City Clerk for review by interested persons during the regular office hours of such office;

(c) At 7:00 p.m., prevailing time, on Monday, February 7, 2005, in the Council Chambers, Charleston, West Virginia, in accordance with the Ordinance and the Notice, City 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 and no written protest with regard thereto were presented that would require other modification or amendment of the Ordinance; and

(e) That the Ordinance shall be put into effect as of the date hereof and the Notes and the Series 2005 Bonds contemplated thereby shall be issued, all as provided in the Ordinance and this Supplemental Resolution.

2. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the following bonds of the City:

(a) The City of Charleston Parking System Bond Anticipation Notes, in the original principal amount not to exceed $2,885,000. The Note shall be dated such date, shall finally mature on June 1, 2013, shall bear interest and prices with interest

payable on such dates, and shall have such redemption provisions and other terms as shall be approved by the Mayor in the Certificate of Determination the form of which is attached hereto as EXHIBIT B.

(b) The City of Charleston Parking System Refunding Revenue Bonds, Series 2005 A shall be issued in such aggregate principal amount not to exceed $10,000,000, shall be dated such date, shall finally mature on June 1, 2016, shall bear interest and prices with interest payable on such dates, and shall have such redemption provisions and other terms as shall be approved by the Mayor in the Certificate of Determination the form of which is attached hereto as EXHIBIT B.

(c) The City of Charleston Parking System Refunding Revenue Bonds, Series 2005 B shall be issued in such aggregate principal amount not to exceed $2,885,000, shall be dated such date, shall finally mature on June 1, 2013, shall bear interest and prices with interest payable on such dates, and shall have such redemption provisions and other terms as shall be approved by the Mayor in the Certificate of Determination the form of which is attached hereto as EXHIBIT B.

3. The Mayor of The City of Charleston, West Virginia (the "Mayor") is hereby authorized and directed to set forth the exact principal amount, the maturities, the interest rates, the redemption provisions, the price, and other terms and details of the Notes, the Series 2005 A Bonds and the Series 2005 B Bonds, subject to the parameters set forth herein in the Certificate of Determination, substantially in the form attached hereto as EXHIBIT B and incorporated herein, to be executed and delivered in connection with the sale of the Notes, the Series 2005 A Bonds and the Series 2005 B Bonds. Assuming such parameters are met, the Certificate of Determination shall have full force and effect as if adopted as a part of this Supplemental Resolution.

4. All other provisions relating to the Notes and the Series 2005 Bonds and the text of the Notes and the Series 2005 Bonds shall be as provided in the Ordinance, and the Bonds shall be in substantially the form provided in EXHIBIT C attached hereto and incorporated herein, 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.

5. A Bond Purchase Agreement for the Notes, each series of Series 2005 Bonds, by and between the Original Purchasers and the Issuer, the form of which is attached hereto as EXHIBIT D and incorporated herein, and the execution and delivery by the Mayor thereof shall be and the same are hereby authorized, approved, and directed. The Mayor shall execute and deliver each Purchase Agreement for the Notes and each series of Series 2005 Bonds with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Purchase Agreement for the Notes and each series of Series 2005 Bonds by the Mayor shall be conclusive evidence of any

approval required by this Section, and authorization of any action required by the Purchase Agreement relating to the issuance and sale of the Notes and each series of Series 2005 Bonds, including the payment of all necessary fees and expenses in connection therewith.

6. A Continuing Disclosure Certificate of the Issuer, for the Notes and each series of Series 2005 Bonds, to be dated as of the date of delivery of the respective Notes and series of Series 2005 Bonds, the form of which is attached hereto as EXHIBIT E and incorporated herein, and the execution and delivery by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Continuing Disclosure Certificate for each series of Bonds with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Continuing Disclosure Certificate for each series of Bonds by the Mayor shall be conclusive evidence of any approval required by this Section.

7. The Escrow Agreements by and between the Issuer and the West Virginia Municipal Bond Commission as Escrow Agent, to be dated as of the date of delivery of the Notes and the Series 2005 A Bonds, substantially in the form attached to the Certificate of Determination, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Escrow Agreements with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Escrow Agreements by the Mayor shall be conclusive evidence of any approval required by this Section.

8. A Preliminary Official Statement and an Official Statement for the Notes and each series of Series 2005 Bonds, in substantially the form of the Preliminary Official Statement attached hereto as EXHIBIT F and incorporated herein (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the Mayor), and the distribution of counterparts or copies thereof by the Original Purchasers are hereby approved. The Mayor shall execute and deliver the Official Statement for the Notes and Series 2005 Bonds with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Official Statement for the Notes, each series of Bonds by the Mayor shall be conclusive evidence of any approval required by this Section.

9. City Council hereby appoints and designates United Bank, Inc., Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds.

10. Upon redemption of the Series 1993 Bonds, all funds remaining on in the Series 1993 Bonds Escrow Account shall be transferred to the Note Reserve Account and upon redemption of the Series 1994/1995 Bonds, all funds remaining on in the Series 1994/1995 Bonds Escrow Account shall be transferred to the Series 2005 A Bonds Sinking Fund and applied to the next ensuing interest payment.

11. Upon exchange of the Notes for the Series 2005 B Bonds, all funds remaining in the Note Repayment Account, following the payment of interest on the Notes shall be transferred to the Series 2005 B Bonds Sinking Fund.

12. Simultaneous with the issuance of the Series 2005 A Bonds and the defeasance of the Series 1994/1995 Bonds, the sum of $1,000,000 shall be transferred from the Repair, Maintenance and Operations Fund established under the Prior Ordinance to the City, as payment for the acquisition of that certain parking lot, containing approximately 103 parking spaces, located at the intersection of the southwesterly line of Smith Street and the southeasterly line of Morris Street, containing 1.143 acres more or less ("Parking Lot A"), and that certain parking lot, containing approximately 161 parking spaces, located at the intersection of the southeasterly line of Morris Street and the northeasterly line of Smith Street, containing 1.171 acres more or less ("Parking Lot B").

13. Upon acquisition of Parking Lot A and Parking Lot B, as contemplated in Section 12 above, Parking Lot A and Parking Lot B shall be deemed and designated as Off-Street Parking Facilities within the Parking System.

14. Effective the delivery of the Series 2005 A Bonds and the defeasance of the Series 1994/1995 Bonds, the Repair, Maintenance and Operations Fund requirement shall be $200,000.

15. City Council hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Bond Commission in Qualified Investments (except for the Escrow Funds).

16. City Council hereby approves all costs of issuance in connection with the Notes and the Series 2005 Bonds and authorizes the payment thereof.

17. The Escrow Agent is hereby authorized to mail the notice of redemption of the Series 1993 Bonds as provided in the Prior Ordinance in order to call the Series 1993 Bonds on or about March 15, 2005, and is hereby authorized to mail the notice of redemption of the Series 1994/1995 Bonds as provided in the Prior Ordinance in order to call the Series 1994/1995 Bonds on or about April 10, 2005.

18. The City hereby recognizes the statutory mortgage lien, created by Chapter 8, Article 16, Section 22 and 24, on the Parking System.

19. The City hereby determines that the Series 2005 A Bonds shall be "deemed designated" as qualified tax exempt obligations within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code, as amended.

20. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required as desirable in connection with the issuance and sale of each series of the Notes and the 2005 A Bonds to the end that the Notes and each series of Bonds may be delivered on a timely basis to the Original Purchasers pursuant to the respective Bond Purchase Agreement.

21. This Supplemental Resolution shall go into effect immediately upon adoption.

Adopted this 7th day of February, 2005.

EXHIBIT A

Affidavit of Publication

The Classifieds
Sell It Smart. Find It Smart. Buy It Smart.
The Charleston Gazette • Charleston Daily Mail • Sunday Gazette-Mail • Metro

BONA FIDE CLASSIFIED

Century 21

Search results for abstract of bond ordinance



1.

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 January 18, 2005, the Council of The City of Charleston, West Virginia (the "City") adopted an ordinance which, among other things:

1. Authorized the refunding of the Parking System Refunding Revenue Bonds, Series 1993, the Parking System Revenue Bonds, Series 1994 A, the Parking System Subordinate Revenue Bonds, Series 1994 B and the Parking System Subordinate Revenue Bonds, Series 1995 A of The City of Charleston; authorized the issuance of not more than $3,500,000 in Parking System Bond Anticipation Notes; authorized the issuance of not more than $12,885,000 in aggregate principal amount of Parking System Refunding Revenue Bonds, Series 2005 A and Series 2005 B, of The City of Charleston (collectively, the "2005 Bonds"), 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 finance the cost

of such refunding, to fund reserve accounts for such bonds and to pay other costs in connection therewith; provided for the rights and remedies of and security for the registered owners of such bonds, all with respect to the City's Parking System (the "System").

2. Directed that the 2005 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.

3. 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 2005 Bonds.

4. Provided that the 2005 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 2005 Bonds and established the rights of the registered owners of the Bonds to such Net Revenues.

5. Provided certain conditions for the issuance of additional bonds.

6. Established the events of default and the remedies of the registered owners.

The City contemplates the issuance of the 2005 Bonds described in, and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of

appeal before the Council of the City of Charleston at a regular meeting on February 7, 2005, 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 January 18, 2005, 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 -- The City of Charleston,
West Virginia

**(151498)**

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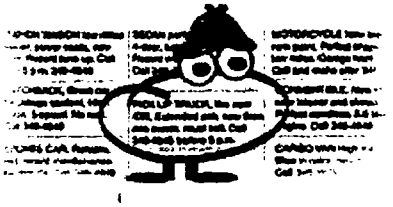

EXHIBIT B

Form of
Certificates of Determination

THE CITY OF CHARLESTON (WEST VIRGINIA)
PARKING SYSTEM BOND ANTICIPATION [NOTES,] SERIES 2005

THE CITY OF CHARLESTON (WEST VIRGINIA)
PARKING SYSTEM REFUNDING REVENUE BONDS,
[SERIES 2005 A] [SERIES 2005 B BONDS]

CERTIFICATE OF DETERMINATION

The undersigned, Danny Jones, Mayor of The City of Charleston (the "City"), in accordance with Section 2 of the Supplemental Resolution adopted by the Council of the City on February 7, 2005 (the "Supplemental Resolution"), with respect to The City of Charleston (West Virginia Parking System Bond Anticipation Notes, Series 2005/The City of Charleston (West Virginia) Parking System Refunding Revenue Bonds, Series 2005 A and [Series 2005 B], hereby finds and determines as follows:

1. The Series 2005 Notes [A] [B] Bonds shall be dated as of _____, 2005.

2. The Series 2005 Notes [A] [B] Bonds shall be issued in the aggregate principal amount of $_____ and a yield of _____. Such principal amount and yield do not exceed $_____, being the maximum principal amount authorized by the Supplemental Resolution.

3. The Series 2005 Notes [A] [B] Bonds shall mature in the amounts and on the dates and shall be subject to mandatory sinking fund redemption in the amounts and on the dates set forth on Schedule 1 attached hereto and incorporated herein.

4. The Series 2005 Notes [A] [B] Bonds shall bear interest at the rates and produce the yields set forth on Schedule 1 attached hereto and incorporated herein.

5. The Series 2005 Notes [A] [B] Bonds shall be subject to optional and mandatory redemption as set forth on Schedule 2 attached hereto and incorporated herein.

6. The Series 2005 Notes [A] [B] Bonds shall be sold to Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (collectively, the "Underwriters"), pursuant to the terms of the Purchase Agreement by and between the Underwriters and the City, at an aggregate purchase price of $_____ (representing par value less an Underwriters' discount of $_____ and a net original issue discount of $_____),

plus interest accrued of $_____ on the Series 2005 Notes [A] [B] Bonds from 1, 2005 to _____, 2005 (the "Closing Date").

7. Based upon the actual principal amount, maturity schedule and interest rates for the Series 2005 Notes [A] [B] Bonds, attached hereto, it is hereby determined that the Series 2005 Notes [A] [B] Bonds show a net savings to the Issuer after deducting all expenses of the refunding.

9. The form[s] of the Purchase Agreement, the Continuing Disclosure Certificate, the Escrow Agreement, the Registrar Agreement and Official Statement attached hereto are hereby approved.

10. Contingent upon the issuance of the Series 2005 A Bonds, and the defeasance of the Issuer's Parking System Revenue Bonds, Series 1994, 1995 Bonds, the City shall provide a notice of redemption to the registered owners of the Note, said notice to be mailed no earlier than sixteen days after the issuance of the Series 2005 A Bonds and the notice shall provide that the Notes will be exchanged for the Series 2005 B Bonds at least seven days after the date of the notice. The Notes shall be exchanged for the Parking System Refunding Revenue Bonds, Series 2005 B on the date set by the Notice. Interest on the Notes shall be payable on exchange of the Notes for the Series 2005 B Bonds.

The undersigned hereby certifies that the foregoing terms and conditions of the Series 2005 Notes [A] [B] Bonds are within the parameters prescribed by the Supplemental Resolution, and the Series 2005 Notes [A] [B] Bonds may be issued with such terms and conditions as authorized by the Supplemental Resolution.

Upon the delivery of the Notes:

(a) all funds on deposit with the West Virginia Municipal Bond Commission (the "Bond Commission") in the Debt Service Fund established and existing for the Issuer's Parking System Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds") shall be transferred to the Series 1993 Bonds Escrow Account and be used to pay principal, interest and redemption premium of $_____, on the Series 1993 Bonds on March _____, 2005;

(b) all funds on deposit with the Bond Commission in the Series 1993 Bonds Debt Service Reserve Fund established for the Series 1993 Bonds shall be transferred to the Series 1993 Bonds Escrow Account and be used to pay principal, interest and redemption premium of $_____, on the Series 1993 Bonds on March _____, 2005;

(c) Proceeds of the Notes in the amount of $_____ shall be deposited in the Series 1993 Bonds Escrow Account and be used to pay principal, interest and redemption premium, if any, on the Series 1993 Bonds on March _____, 2005;

(d) Proceeds of the Notes in the amount of $_____, representing accrued interest on the Notes, shall be deposited in the Note Repayment Account and be used to pay interest on the Notes upon exchange of the Notes for the Series 2005 B Bonds;

(e) The remaining proceeds of the Note shall be deposited in the Note Repayment Account and be used for paying costs of issuance of the Note.

WITNESS my signature this ____ day of _____, 2005.

THE CITY OF CHARLESTON

_____
Mayor

Schedule 1

Maturity Schedule

Series 2005 Notes [A] [B]

| Maturity | Amount | Interest Rate | Price or Yield | CUSIP No. |
|---|---|---|---|---|

Series 2005 Notes [A] [B]

| Maturity | Amount | Interest Rate | Price or Yield | CUSIP No. |
|---|---|---|---|---|

Schedule 2

Optional Redemption

The Series 2005 Notes [A] [B] Bonds maturing on and after _____, ____, are subject to redemption, at the option of the Issuer on or after _____, _____, in whole or in part, at any time in inverse order of maturity by lot within a maturity, at the following redemption prices expressed as percentages of the principal amount, plus interest, if any, accrued to the date fixed for redemption:

| Redemption Period | Price |
|---|---|
| _____ through _____ | _____ % |
| _____ through _____ | _____ % |
| _____ and thereafter | _____ % |

Mandatory Sinking Fund Redemption

The Series 2005 Notes [A] [B] Bonds maturing on _____, _____ ("Term Bonds") are subject to mandatory redemption prior to maturity, by lot, from the Redemption Account at a Redemption Price equal to the principal amount thereof, together with accrued interest to the date fixed for redemption and in the amounts set forth below:

20 - - Terms Bonds

| Year | Amount | Year | Amount |
|---|---|---|---|

*Stated maturity.

# ESCROW AGREEMENT

[1993] [1994/95]

This AGREEMENT, made and entered into as of the _____ day of _____, 2005, by and among THE CITY OF CHARLESTON, WEST VIRGINIA (hereinafter referred to as the "City") and the WEST VIRGINIA MUNICIPAL BOND COMMISSION (hereinafter referred to as the "Escrow Trustee" or "Escrow Agent").

WITNESSETH THAT:

WHEREAS, the City, pursuant to Ordinance No. 4955 adopted on May 3, 1993 (the "1993 Ordinance"), the City issued its Parking System Refunding Revenue Bonds, Series 1993, dated June 1, 1993, in the original principal amount of $5,235,000, of which $3,000,000 is currently outstanding (the "1993 Bonds");

[WHEREAS, pursuant to Ordinance No. 6059 adopted on November 21, 1994, the City issued its Parking System Revenue Bonds, Series 1994 A, Series 1994 B and Series 1995 A, in the original principal amounts of $4,545,000; $5,455,000; and $1,620,000, respectively, of which $3,720,000; $4,035,000 and $1,195,000 are outstanding respectively (the "1994/95 Bonds");]

WHEREAS, the [1993] [1994/95] mature on the dates and bear interest at the rates set forth in Schedule A hereto;

WHEREAS, the City has determined to issue its [Notes] Parking System Refunding Revenue Bonds, Series 2005 A (the "Series 2005 A Bonds"), pursuant to Ordinance No. 7123 enacted on February 7, 2005, as supplemented as resolution adopted on February 7, 2005 (collectively, the "Ordinance"), the proceeds of which will be used to refund the [1993] [1994/95] Bonds;

WHEREAS, the City has made arrangements for the Escrow Trustee to purchase from the proceeds of the [Notes/Series 2005 A Bonds] and other available moneys, the United States Treasury Obligations (the "Government Securities") described in Schedule B hereto, the principal of and interest on which, when due, without consideration of any reinvestment of such maturing principal and interest, together with cash to be deposited with the Escrow Trustee, will provide sufficient moneys to enable the Escrow Trustee to pay as the same shall become due and payable the interest to accrue on and payment to mature all [1993] [1994/95] Bonds to the respective dates of payment at maturity.

WHEREAS, the City has found it desirable to appoint the Escrow Trustee for the purposes of holding title to the Government Securities, receiving payments of the principal thereof and interest thereon when due, disbursing to the paying agents such amounts as may be necessary to provide for payment of the [1993] [1994/95] Bonds and the interest thereon when

due, and holding and investing and reinvesting any cash balances which may at any time not be needed for immediate disbursement; and

WHEREAS, the City has taken all action necessary to appoint and designate the Commission as the Escrow Trustee to accomplish such purposes;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and in order further to secure payment of the [1993] [1994/95] Bonds, as heretofore provided, the parties hereto mutually undertake, promise and agree for themselves, their respective representatives, successors and assigns, as follows:

1. Receipt of true and correct copies of the Ordinance and the Prior Ordinances are hereby acknowledged by the Escrow Trustee. Reference herein to or citation herein of any provisions of either the Prior Ordinances or the Ordinance shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

2. There is hereby created and established with the Escrow Trustee a special and irrevocable trust fund designated the "**The City of Charleston, West Virginia, [1993] [1994/95] Parking System Revenue Bonds Escrow Fund**" (hereinafter referred to as the "Escrow Fund"), to be held in the custody of the Escrow Trustee, separate and apart from other funds of the City, the Commission or the Escrow Trustee. The deposit of investments or moneys in the Escrow Fund shall constitute an irrevocable deposit of said investments or moneys in trust for, and such moneys and the investments thereof, together with any income or interest earned thereon, shall be applied, except as otherwise provided herein, to, the payment of the principal of and interest on the [1993] [1994/95] Bonds as the same become due and payable.

3. Concurrently with the delivery of the [Notes/Series 2005 A Bonds], the City shall deposit $_____ from the proceeds of sale of the [Notes/Series 2005 A Bonds], and $_____ from the sinking fund, including the reserve account therein, created and maintained on account of the [1993] [1994/95] Bonds into the Escrow Fund with the Escrow Trustee (total deposit $_____), and the Escrow Trustee shall apply $_____ to the purchase of the Government Securities described in Schedule B hereto, [and shall hold $_____ in cash]. Smith, Cochran & Hicks, Charleston, West Virginia, independent certified public accountants, have certified, in their letter dated _____, 2005, attached hereto as Schedule C, that the Government Securities, together with the income to be derived from the investment of the Government Securities and cash, will be sufficient to pay the principal of and interest on the Prior Bonds as the same become due and payable as described in the fifth recital hereto.

4. The Government Securities shall be credited to the Escrow Fund. The Escrow Trustee shall deposit any proceeds (whether principal, interest or otherwise) derived from the Government Securities in the Escrow Fund. Except as provided above, the Escrow Trustee shall have no power or duty to invest any moneys held hereunder or to make

substitutions of the Government Securities hereunder, or to sell, transfer or otherwise dispose of Government Securities acquired hereunder.

5. The Escrow Trustee shall deposit directly with the paying agent or agents therefor, in immediately available funds, from the amounts held in the Escrow Fund on the dates set forth on Schedule A hereto the amounts required to comply with the payments of principal and interest on the [1993] [1994/95] Bonds in accordance with the terms of the fifth recital hereto.

6. The holders of the [1993] [1994/95] Bonds shall have an express lien on all moneys and assets in the Escrow Fund until paid out, used and applied in accordance with this Agreement.

7. After the payment of all the [1993] [1994/95] Bonds, and the interest thereon, the amounts remaining in the Escrow Fund shall be transferred to the Sinking Fund established under the Ordinance as set forth in the Supplemental Resolution.

8. Concurrently with the delivery of the [Notes/Series 2005 A Bonds], the Escrow Trustee shall be paid its fees and expenses incurred with respect to this Agreement. Future fees and expenses of the Escrow Trustee and the paying agents for the [1993] [1994/95] Bonds shall be promptly paid by the City from the net revenues of the System described in the Ordinance as they accrue.

In no event, however, shall the Escrow Trustee or the paying agents have any lien whatsoever upon any of the moneys or Government Securities in the Escrow Fund, for the payment of such fees or expenses.

9. The City and the Escrow Trustee independently hereby covenant that no part of the moneys or funds at any time in the Escrow Fund, shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the Series 2005 Bonds to be "arbitrage bonds" as defined in Section 148 of the Internal Revenue Code of 1986, as amended.

10. The Escrow Trustee shall have no responsibility in respect of the validity or sufficiency of this Agreement. The liability of the Escrow Trustee for the payment of the principal of and the interest on the [1993] [1994/95] Bonds shall be limited to the application of the moneys and Government Securities available for such purposes in the Escrow Fund. The Escrow Trustee shall not be liable or responsible because of the failure of the City to perform any act required of it by this Agreement or because of the loss of any moneys arising through the insolvency or the act or default or omission of any depository, other than the Escrow Trustee, in which such moneys shall have been deposited.

11. If any outstanding [1993] [1994/95] Bonds or coupons are not presented for payment when due, and moneys are held by the Escrow Trustee for payment thereof but not including any funds held by the paying agent for the Prior Bonds, such moneys shall be held

for such purposes for a period of one (1) year from the date such payment was due, at which time such moneys shall be paid to the City. Prior to such repayment by the Escrow Trustee to the City, the Escrow Trustee shall notify the national securities depository, if any, or any similar organization that said moneys remain unclaimed and that after a date named in said notice, which date shall be the date of such repayment and shall not be less than thirty (30) days after the date of such notice, such moneys shall be paid to the City as its absolute property and free from trust. The City shall pay any costs incurred with respect to such notice.

12. Concurrently with the execution of this Agreement and the defeasance of the lien of the [1993] [1994/95] Bonds, the Commission, at the express direction of the City, shall pay from the funds held by it in the respective sinking funds, including the reserve accounts therein, created and maintained under the Prior Ordinances the sum of $_____ into the Escrow Fund, and the City will cause $_____ to be deposited into the Escrow Fund for the simultaneous purchase of Government Securities by the Escrow Trustee.

13. If any one or more of the covenants or agreements provided in this Agreement to be performed on the part of any of the parties hereto should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

14. Whenever it shall be required hereunder to redeem Prior Bonds, as set out in the fifth recital to this Agreement and Schedule A hereto, the Escrow Trustee shall be responsible for the preparation, publication and mailing of the notice of redemption in accordance with the provisions of the Prior Ordinance. The costs of any required publication and mailing of any notice of redemption shall be paid by the City and under no circumstance shall the Escrow Trustee have any claim on moneys on deposit in the Escrow Fund for payment of such costs, but shall look solely to the City for such payment. The Escrow Trustee shall act on behalf of the City in the conduct of the proceedings for the redemption of the outstanding bonds to be redeemed in accordance with the Prior Ordinance.

15. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

16. This Agreement is made in the State of West Virginia under the Constitution and laws of such State and is to be so construed.

17. This Agreement shall terminate on the earlier of the date on which all the outstanding [1993] [1994/95] Bonds have been paid and discharged in accordance with the respective provisions of the Prior Ordinance or, as described in Paragraph 11, above, one (1) year after the last date on which payment on the [1993] [1994/95] Bonds is due. Government Securities in the Escrow Fund shall be transferred as provided in Paragraph 7 hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

THE CITY OF CHARLESTON, WEST VIRGINIA

By _____
Its Mayor

WEST VIRGINIA MUNICIPAL BOND COMMISSION

By _____
Its Executive Director

## SCHEDULE A

[Series 1993

| Maturity Date | Principal Amount | Interest Rate] |
|---|---|---|

[Series 1994 A

| Maturity Date | Principal Amount | Interest Rate |
|---|---|---|

Series 1994 B

| Maturity Date | Principal Amount | Interest Rate |
|---|---|---|

Series 1995 A

| Maturity Date | Principal Amount | Interest Rate] |
|---|---|---|

## SCHEDULE B

United State Treasury
Certificate of Indebtedness

# EXHIBIT C

## Form of Note and Bonds

NR-___

FORM OF NOTE

Unless this Note is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Note or Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**
**STATE OF WEST VIRGINIA**
**COUNTY OF KANAWHA**
**THE CITY OF CHARLESTON**

**PARKING SYSTEM BOND ANTICIPATION NOTE, SERIES 2005**

| | | |
|---|---|---|
| Number: | NR-___ | |
| Interest Rate: | _____% | Cusip: _____ |
| Maturity Date: | April 1, 2005 | Bond Date: February 1, 2005 |
| Registered Owner: | Cede & Co. | |
| Principal Amount: | $_____ | |
| | _____ DOLLARS | |

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, but only from the special funds provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above, and also to pay interest on said sum from the date of authentication hereof at the Interest Rate set forth above, semiannually, on the first day of June and the first day of December in each year, beginnining June 1, 2005, both principal of and interest on this Note being payable in any coin or currency which, on the respective dates of payment of principal and interest, is legal tender for the payment of public and private debts under the laws of the United States of America, at the

office of the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (the "Paying Agent"). The interest on this Note being is payable by check mailed to the Registered Owner hereof at the address as it appears on the books of United Bank, Inc., as registrar (the "Registrar"), at the close of business on the 15th day of the month preceding an Interest Payment Date (the "Record Date"); provided, that an owner of $1,000,000 or more of this Note may have interest paid by wire transfer to a designated account at a member bank of the Federal Reserve System specified in writing to the Trustee at least five Business Days preceding the Record Date. This Note is subject to prepayment without penalty in whole or in part at any time upon the payment of the outstanding principal and interest accrued to the prepayment date.

This Note is issued for the purpose of refunding and redeeming prior to maturity certain outstanding The City of Charleston Parking System Refunding Revenue Bonds, Series 1993, dated June 1, 1993 (the "Prior Bonds"), under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 16; Chapter 8, Article 12; and Chapter 13, Article 2E, of the Code of West Virginia, 1931, as amended (the "Act"), and Ordinance No. 7123, duly enacted by the Council of the City on the 7th day of February, 2005 (the "Ordinance"), and is subject to all the terms and conditions of said Ordinance.

Subject to the registration requirements, this Note is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia but may be transferred only upon the surrender hereof at the Office of the Registrar and otherwise as provided by the Ordinance.

All moneys received from the sale of this Note and other notes of the issue of which this Note is one, shall be applied solely to refund and redeem the Prior Bonds and to pay all costs in connection therewith 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 owner or owners of said bonds

THIS NOTE IS UNSECURED AND PAYABLE ONLY FROM THE PROCEEDS OF THE CITY'S PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B (THE "SERIES 2005 B BONDS"), WHEN, AS AND IF ISSUED, ARE NOT SECURED BY A LIEN ON THE NET REVENUES OF THE PARKING SYSTEM, AND DOES NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE CITY OF CHARLESTON, WEST VIRGINIA 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 THE SOURCE SET FORTH ABOVE.

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

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

IN WITNESS HEREOF, the City has caused this Note to be signed by its Mayor and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused this Note to be dated as of the Note Date designated above.

_____
MAYOR

[SEAL]

ATTEST:

_____
CITY CLERK

NR-___

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Note is one of the Notes described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner set forth above.

Date: February ____, 2005

United Bank, Inc.
as Registrar

By _____
Its Authorized Officer

NR-___

**(FORM OF ASSIGNMENT)**

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

_____

_____

_____

_____

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

Dated: _____, _____.

_____

In the presence of:

_____

FORM OF BOND

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**
**STATE OF WEST VIRGINIA**
**COUNTY OF KANAWHA**
**THE CITY OF CHARLESTON**

**PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 A**

| | | |
|---|---|---|
| Number: | AR-___ | |
| Interest Rate: | _____% | Cusip: _____ |
| Maturity Date: | June 1, 20___ | Bond Date: _____ 1, 2005 |
| Registered Owner: | Cede & Co. | |
| Principal Amount: | $_____ _____ DOLLARS | |

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special fund provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above, and solely from such special fund also to pay interest on said sum from the date of authentication hereof at the Interest Rate set

forth above, semiannually, on the first day of June and the first day of December in each year, beginning June 1, 2005, both principal of and interest on this Bond being payable in any coin or currency which on the respective date of payment of principal and interest, is legal tender for the payment of public or private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (the "Paying Agent"). Interest on the Bonds shall be paid by check mailed to the Registered Owner thereof at the address that appears on the books of United Bank, Inc., as registrar (the "Registrar"), at the close of business on the 15th day of the month preceding an Interest Payment Date (the "Record Date"); provided, that an owner of $1,000,000 or more of the Bonds may have interest paid by wire transfer to a designated account at a member bank of the Federal Reserve System specified in writing to the Trustee at least five Business Days preceding the Record Date.

This Bond is one of an authorized issue of bonds in the aggregate principal amount of _____ Dollars ($_____) (the "Bonds"), of like date and of like tenor and effect, except as to number, interest rate and date of maturity, issued for the purpose of refunding and redeeming prior to maturity certain outstanding The City of Charleston Parking Revenue Bonds, Series 1994 A, dated December 15, 1994, The City of Charleston Parking Revenue Bonds, Series 1994 B, dated December 15, 1994, and The City of Charleston Parking Revenue Bonds, Series 1995 A, dated January 1, 1995 (the "Prior Bonds"), under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 16; Chapter 8, Article 12; and Chapter 13, Article 2E, of the Code of West Virginia, 1931, as amended (the "Act"), and Ordinance No 7123, duly enacted by the Council of the City on the 7th day of February, 2005 (the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. This Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally with the Bonds.

This Note is subject to prepayment without penalty in whole or in part at any time upon the payment of the outstanding principal and interest accrued to the prepayment date. The Bonds shall, at the option of the City, be redeemable in whole or in part, at the times, in the manner, and upon payment of the redemption prices, as provided in the Certificate of Determination executed by the Mayor of the City with respect to the issuance of this Bond.

The Bonds are payable only from and secured by a shared first lien on the net revenues to be derived from the operation of the parking system of the City, which net revenues shall be sufficient to pay the principal of, and interest on, all bonds which may be issued for the construction, acquisition, extension or betterment of such parking system as and when the same become due and payable, and which shall be set aside as a special fund thereby 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 said City be obligated to pay the same or the interest hereon except from said special fund provided from the net revenues from the operation of said parking system. The City in said Ordinance has covenanted and agreed to fix and establish and maintain such rates and collect such fees, rentals or other charges for the service and facilities of said parking system, and to revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to pay one hundred fifteen per centum (115%) of the largest amount of

principal and interest which will mature and become due on the Bonds payable from the net revenues then outstanding in any succeeding fiscal year, in addition to paying, as the same shall become due, the necessary expenses of repair (including replacement), maintenance and operation of said parking system during such fiscal year, and all obligations payable out of the net revenues of said parking system during such fiscal year, and that such rates, fees, rentals or other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes, and said City has entered into certain further covenants with the registered owners of the bonds for the terms of which reference is made to said Ordinance.

Subject to the registration requirements, this Bond is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia but may be transferred only upon the surrender hereof at the Office of the Registrar and otherwise as provided by the Ordinance.

All moneys received from the sale of this Bond and other bonds of the issue of which this Bond is one, shall be applied solely to refund and redeem the Prior Bonds and to pay all costs in connection therewith 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 owner or owners of said bonds.

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond 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 said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the net revenues of the parking system of the City has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on this Bond and the issue of which it is one.

All provisions of the Ordinance, as defined on the reverse hereof, and the 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 HEREOF, the City has caused this Bond to be signed by its Mayor and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated as of the Bond Date designated above.

_____
MAYOR

[SEAL]

ATTEST:

_____
CITY CLERK

AR-___

## CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner set forth above.

Date: March __, 2005

UNITED BANK, INC.,
as Registrar

By _____,
Its Authorized Officer

AR-___

**(FORM OF ASSIGNMENT)**

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

_____

_____

_____

_____

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

Dated: _____, _____.

_____

In the presence of:

_____

FORM OF BOND

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**
**STATE OF WEST VIRGINIA**
**COUNTY OF KANAWHA**
**THE CITY OF CHARLESTON**

**PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B**

| | | |
|---|---|---|
| Number: | BR-___ | |
| Interest Rate: | _____% | Cusip: _____ |
| Maturity Date: | June 1, 20__ | Bond Date: April 1, 2005 |
| Registered Owner: | Cede & Co. | |
| Principal Amount: | $_____ | |
| | _____ DOLLARS | |

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special fund provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above, and solely from such special fund also to pay interest on said sum from the date of authentication hereof at the Interest Rate set

forth above, semiannually, on the first day of June and the first day of December in each year, beginning June 1, 2005, both principal of and interest on this Bond being payable in any coin or currency which on the respective date of payment of principal and interest, is legal tender for the payment of public or private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (the "Paying Agent"). Interest on the Bonds shall be paid by check mailed to the Registered Owner thereof at the address that appears on the books of United Bank, Inc., as registrar (the "Registrar"), at the close of business on the 15th day of the month preceding an Interest Payment Date (the "Record Date"); provided, that an owner of $1,000,000 or more of the Bonds may have interest paid by wire transfer to a designated account at a member bank of the Federal Reserve System specified in writing to the Trustee at least five Business Days preceding the Record Date.

This Bond is one of an authorized issue of bonds in the aggregate principal amount of _____ Dollars ($_____) (the "Bonds"), of like date and of like tenor and effect, except as to number, interest rate and date of maturity, issued for the purpose of refunding and redeeming prior to maturity certain outstanding The City of Charleston Parking System Bond Anticipated Note, Series 2005 (the "Prior Bonds"), under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 16; Chapter 8, Article 12; and Chapter 13, Article 2E, of the Code of West Virginia, 1931, as amended (the "Act"), and Ordinance No 7123, duly enacted by the Council of the City on the 7th day of February, 2005 (the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. This Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally with the Bonds.

This Note is subject to prepayment without penalty in whole or in part at any time upon the payment of the outstanding principal and interest accrued to the prepayment date. The Bonds shall, at the option of the City, be redeemable in whole or in part, at the times, in the manner, and upon payment of the redemption prices, as provided in the Certificate of Determination executed by the Mayor of the City with respect to the issuance of this Bond.

The Bonds are payable only from and secured by a shared first lien on the net revenues to be derived from the operation of the parking system of the City, which net revenues shall be sufficient to pay the principal of, and interest on, all bonds which may be issued for the construction, acquisition, extension or betterment of such parking system as and when the same become due and payable, and which shall be set aside as a special fund thereby 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 said City be obligated to pay the same or the interest hereon except from said special fund provided from the net revenues from the operation of said parking system. The City in said Ordinance has covenanted and agreed to fix and establish and maintain such rates and collect such fees, rentals or other charges for the service and facilities of said parking system, and to revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to pay one hundred fifteen per centum (115%) of the largest amount of principal and interest which will mature and become due on the Bonds payable from the net revenues then outstanding in any succeeding fiscal year, in addition to paying, as the same shall

become due, the necessary expenses of repair (including replacement), maintenance and operation of said parking system during such fiscal year, and all obligations payable out of the net revenues of said parking system during such fiscal year, and that such rates, fees, rentals or other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes, and said City has entered into certain further covenants with the registered owners of the bonds for the terms of which reference is made to said Ordinance.

Subject to the registration requirements, this Bond is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia but may be transferred only upon the surrender hereof at the Office of the Registrar and otherwise as provided by the Ordinance.

All moneys received from the sale of this Bond and other bonds of the issue of which this Bond is one, shall be applied solely to refund and redeem the Prior Bonds and to pay all costs in connection therewith 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 owner or owners of said bonds.

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond 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 said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the net revenues of the parking system of the City has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on this Bond and the issue of which it is one.

All provisions of the Ordinance, as defined on the reverse hereof, and the 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 HEREOF, the City has caused this Bond to be signed by its Mayor and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated as of the Bond Date designated above.

_____
MAYOR

[SEAL]

ATTEST:

_____
CITY CLERK

## CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner set forth above.

Date: April ____, 2005

United Bank, Inc.,
as Registrar

By _____
Its Authorized Officer

**(FORM OF ASSIGNMENT)**

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

_____

_____

_____

_____

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

Dated: _____, _____.

_____

In the presence of:

_____

$2,835,000
THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM BOND ANTICIPATION NOTE,
SERIES 2005

AND
WHEN, AS AND IF ISSUED

$2,835,000
THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

BOND PURCHASE AGREEMENT

February __, 2005

City of Charleston
P.O. Box 2749
Charleston, WV 25330

Ladies and Gentlemen:

1. Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated and (collectively, the "Underwriter") offers to enter into the following agreement with you, the City of Charleston (the "City"), which, upon your acceptance of this offer, will become binding upon you and upon the Underwriter. This offer is made subject to your acceptance by execution of this Bond Purchase Agreement (the "Purchase Contract") and its delivery to us on or before 5:00 P.M., prevailing time, today. Terms used and not defined in this Purchase Contract have the meanings given to them in the Official Statement hereinafter referred to.

2. Upon the terms and conditions and upon the basis of the representations and warranties hereinafter set forth, the Underwriter hereby agrees to purchase from you for offering to the public, and you hereby agree to sell to the Underwriter for such purpose, all (but not less than all) of $2,835,000 aggregate principal amount of the City of Charleston, Parking System Bond Anticipation Note, Series 2005 (the "Series 2005 Note"), and when, as and if issued, the $2,835,000 City of Charleston, Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds" and, together with the Series 2005 Note, the "Series 2005 Bonds"), having the principal amounts and maturities and bearing interest at the rates stated in the Official Statement hereinafter referred to, at the aggregate purchase price of $2,___,___.__. This purchase price reflects a net original issue discount of $_____ and underwriters' discount of $_____, plus accrued interest of $_____ on the Bonds from February 1, 2005 to the date of the Closing.

3. The Bonds shall be as described in, and shall be issued pursuant to, an Ordinance passed by City Council of the City and effective on February 7, 2005 (together, the "Ordinance" or "Bond

Ordinance"). The Bonds shall be secured by the parking system revenues collected by the City.

4. We agree to make a bona fide public offering of all the Bonds not in excess of the initial public offering prices (which may be expressed in terms of yields), set forth on the cover page of the Official Statement (hereinafter defined), plus interest accrued thereon from the date thereof, reserving, however, the right to change such yields or prices as the Underwriter shall deem necessary in connection with the offering of the Bonds, even after the initial offering.

5. (a) Prior to the date hereof, you have provided for our review a form of Official Statement that the City deems final as of its date, except for certain omissions in connection with the pricing of the Bonds. At the time of or before your acceptance hereof, you shall deliver to us three executed copies of the Official Statement of the City dated today relating to the Bonds (the form of which, together with the cover page and all appendices or supplements thereto as are adopted by the City in accordance herewith and other reports or statements attached thereto or included therein, is called the "Official Statement") executed on behalf of the City by its Chairman.

(b) You authorize any and all of this material, including specifically the Official Statement and the information therein contained, to be used in connection with the public-offering and sale of the Bonds. The City hereby ratifies the use by the Underwriter prior to the date hereof of the Preliminary Official Statement of the City dated February __, 2005, in connection with the public offering of the Bonds.

(c) You agree to deliver or cause to be delivered to the Underwriter, at such address as the Underwriter shall specify, as many additional copies of the Official Statement as the Underwriter shall reasonably request as necessary to comply with paragraph (b)(4) of Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 CFR §240.15c2-12) (the "Rule"). You agree to deliver such additional copies of the Official Statement, complete as of its date of delivery and in form satisfactory to the Underwriter, upon acceptance hereof or as soon as practicable thereafter (but in any event within seven (7) business days after the date hereof and in sufficient time to accompany any confirmation that requests payment from any customer).

The Underwriter agrees to give notice to the City on the date after which the Underwriter shall no longer be obligated to deliver the Official Statement pursuant to paragraph (b)(4) of the Rule.

(d) From the date hereof, if, until the earlier of (i) 90 days from the end of the underwriting period or (ii) the time when the Official Statement is available to any person from a nationally recognized municipal securities information repository (but in no case less than twenty-five (25) days following the end of the underwriting period), any event occurs as a result of which, it may be necessary to amend or supplement the Official Statement in order to make the statements therein, in light of the circumstances under which they were made, not misleading, the City shall notify the Underwriter and, if in the opinion of the City or the Underwriter, such event requires the preparation and publication of an amendment or supplement to the Official Statement, the City, at its expense, promptly will prepare an appropriate amendment or supplement thereto (and file, or

cause to be filed, the same with a nationally recognized municipal securities information repository) so that the statements in the Official Statement as so amended or supplemented will not, in light of the circumstances under which they were made, be misleading.

6. The City represents and warrants to the Underwriter that:

(a) The City is a public corporation and political subdivision of the State of West Virginia (the "State"), established and existing under the laws of the State, and has, and at the date of the Closing will have, full legal right, power and authority (i) to enter into this Purchase Contract, (ii) to enact the Ordinance providing for the issuance of and security for the Bonds (including the pledge by the City of the parking system revenues), (iii) to issue, sell and deliver the Bonds to the Underwriter as provided herein; and (iv) to carry out and to consummate the transactions contemplated by this Purchase Contract, the Ordinance and the Official Statement;

(b) The City has complied, and will at the Closing be in compliance, in all respects with Chapter 8, Article 12, Chapter 8, Article 16 and Chapter 13, Article 2E of the West Virginia Code of 1931, as amended (collectively, the "Act");

(c) By official action of the City prior to or concurrently with the acceptance hereof, the City has duly authorized the Ordinance and has duly ratified the distribution of the Preliminary Official Statement and the execution and delivery of the Official Statement, has duly authorized and approved the execution and delivery of, and the performance by the City of the obligations contained in, the Bonds and this Purchase Contract and has duly authorized and approved the performance by the City of the obligations contained in the Ordinance and the consummation by it of all other transactions contemplated by the Official Statement;

(d) The execution and delivery of this Purchase Contract and the Bonds and the execution of the Ordinance and compliance with their respective provisions will not conflict with or constitute a breach of or default under any applicable law or administrative regulation of the State of West Virginia or the United States or any applicable judgment or decree or any agreement or other instrument to which the City is a party or is otherwise subject and will not conflict with any provision of the Act;

(e) We have no reason to believe that, the financial statements relating to the City in the Official Statement do not fairly present the respective financial positions and results of operations of the City as of the dates and for the periods therein set forth;

(f) At the time of the City's acceptance hereof, the Preliminary Official Statement was and the Official Statement, as of the date hereof is, and as it may be amended or supplemented at the date of delivery to the Underwriter and at the Closing will be, true and correct in all material respects and the Preliminary Official Statement did not, and the Official Statement does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and, in addition, any amendments or supplements to the Official Statement prepared and furnished by the City pursuant hereto will not contain any untrue statement of a material fact or omit to state any material facts necessary to make the statements

therein, in light of the circumstances under which they were made, not misleading;

(g) Between the date of this Purchase Contract and the Closing, the City will not issue any bonds, notes or other obligations for borrowed money, secured by the Lease, except as described in or contemplated by the Official Statement, and without the prior written consent of the Underwriter, the City will not incur any material liabilities, direct or contingent, nor will there be any adverse change of a material nature in the financial position, results of operations or condition, financial or otherwise, of the City;

(h) No litigation is pending or, to the knowledge of the City, threatened in any court in any way restraining or to enjoining the issuance or delivery of the Bonds, or the security therefore or the proceedings or authority under which they are to be issued;

(i) To the best of your knowledge, there is no litigation pending or, to the City's knowledge, threatened against the City, wherein an unfavorable decision would adversely affect the ability of the City to carry out its obligations under the Ordinance or would have a material adverse impact on the financial position or results of operations of the City;

(j) The City will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter, as the Underwriter reasonably may request to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate and to provide for the continuance of such qualifications, but won't subject the City to service of process in jurisdictions other than that to which the City is subject pursuant to the Act; and

(k) If between the date of this Purchase Contract and the date of the Closing an event occurs affecting the City which is materially adverse for the purpose for which the Official Statement is to be used and is not disclosed in the Official Statement, the City shall notify the Underwriter and if in the opinion of the Underwriter and counsel to the Underwriter such event requires a supplement or amendment to the Official Statement, the City will supplement or amend the Official Statement in a form and in a manner approved by the Underwriter and counsel to the Underwriter.

7. At 10:00 A.M., prevailing time, on February __, 2005, or at such other time or on such earlier or later business day as shall have been mutually agreed upon by you and us, you will deliver to us the Bonds in definitive form, duly executed and authenticated, together with the other documents hereinafter mentioned; and, subject to the terms and conditions hereof, the undersigned will accept such delivery and pay the purchase price of the Bonds as set forth in Paragraph 2 hereof, by delivering a check payable in federal funds or making a wire transfer in federal funds payable to the order of the Trustee for the benefit of the City. Upon payment as aforesaid, the Bonds will be delivered to The Depository Trust Company in New York, New York, using the DTC FAST closing procedure. This payment and delivery is herein called the "Closing." The Bonds will be delivered as fully registered bonds, one for each stated maturity of the Bonds in the aggregate principal amount of such maturity, bearing proper, duly assigned CUSIP numbers, and registered in the name of The Depository Trust Company's nominee, Cede &Co., and, if the Underwriter shall so request, will be made available to the Underwriter at least twenty-four (24)

hours before the Closing for inspection and packaging.

8. The Underwriter has entered into this Purchase Contract in reliance upon the representations and warranties of the City contained herein and to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the City of its obligations hereunder, both as of the date hereof and as of the date of Closing. Accordingly, the Underwriter's obligations under this Purchase Contract to purchase, accept delivery of and to pay for the Bonds shall be subject to the accuracy in all material respects of the representations and warranties of the City contained herein as of the date hereof and the date of Closing, to the performance by the City of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing, and to the following conditions:

(a) At the time of the Closing (i) the Ordinance shall be in full force and effect and shall not have been amended, modified or supplemented since the date hereof except as may have been agreed to in writing by us, and you shall have duly adopted and there shall be in full force and effect such additional agreements, as shall, in the opinion of Jackson Kelly PLLC, Bond Counsel, be necessary in connection with the transactions contemplated hereby; (ii) the City shall perform or have performed all of its obligations required under or specified in this Purchase Contract, the Ordinance to be performed at, simultaneously with or prior to the Closing; and (iii) the Bonds shall have been executed and authenticated in accordance with the Ordinance.

(b) We may terminate this agreement by notification to you if at any time subsequent to the date hereof and at or prior to the Closing, (i) legislation shall be enacted by the Congress or adopted by either House thereof or a decision by a Court of the United States or the Tax Court of the United States shall be rendered, or a ruling, regulation or official statement by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made, with respect to Federal taxation upon revenues or other income of the general character expected to be derived by you and pledged under the Ordinance or upon interest received on bonds of the general character of the Bonds or which would have the effect of changing, directly or indirectly, the Federal income tax treatment of interest on bonds of the general character of the Bonds in the hands of the holders thereof, which in our opinion materially affects the market price of the Bonds; or (ii) a stop order, ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds is in violation of any provisions of the Securities Act of 1933, as amended or of the Trust Indenture Act of 1939, as amended; or (iii) legislation shall be enacted by the Congress or adopted by either House, or a decision by a court of the United States shall be rendered, or a ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made, to the effect that securities of the City or any similar public body are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended or the Trust Indenture Act of 1939, as amended; (iv) the United States shall have become engaged in hostilities that have resulted in a declaration of war or a national emergency; (v) other than conflicts underway involving the United States government as of the date hereof, a war involving the United States which shall have been declared, or any conflict involving the armed forces of the United States which shall have escalated, the effect of which on the financial markets of the United

States is such as, in the reasonable judgment of the Underwriters, would materially adversely affect the market for the Bonds, or the sale, at the contemplated offering prices by the Underwriters as to the Bonds; (vi) there shall have occurred a general suspension of trading on the New York Stock Exchange or the declaration of a general banking moratorium by United States or New York or West Virginia State authorities, which in our opinion materially affects the market price of the Bonds; (vii) an event described in paragraph 6(k) hereof occurs which in our opinion requires a supplement or amendment to the Official Statement; or (viii) the market for the Bonds or the sale thereof by the Underwriter at the contemplated offering prices shall have been materially and adversely affected, in the opinion of the Underwriter, by reason of the fact that there has occurred a default with respect to the payment of principal of or interest on the debt obligations of, or the institution of proceedings under the Federal bankruptcy laws by or against, any state of the United States or public agency thereof or any city located in the United States with a population of more than 500,000;

(c) At or prior to the Closing, we shall receive the following documents:

(1) The Official Statement of the City, executed on behalf of the City by its Mayor;

(2) Fully authorized Ordinance;

(3) An opinion, dated the date of the Closing and addressed to the City, of Jackson Kelly PLLC, Bond Counsel, in substantially the form attached as Appendix D to the Official Statement, and an unqualified opinion of such counsel, dated the date of the Closing and addressed to the Underwriter, to the effect that such opinion addressed to the City may be relied upon by the Underwriter to the same extent as if such opinion were addressed to them;

(4) A supplemental bond counsel opinion, dated the date of the Closing and addressed to the Underwriter, of Jackson Kelly PLLC, Bond Counsel, to the effect that (i) this Purchase Contract has been duly authorized, executed and delivered by, and (assuming due authorization, execution and delivery by the other parties and that it is a binding agreement of the other parties in accordance with its terms) constitutes a binding agreement in accordance with its terms of, the City; (ii) the Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Ordinance is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; (iii) the statements contained in the Official Statement under the caption "Tax Matters" are true and accurate in all material respects and presents a fair and accurate summary and description of the matters summarized and described under such caption; and (iv) the statements contained in the Official Statement under the captions "Security for the Series 2005 Bonds," "The Series 2005 Bonds" (except for the statements made under the sub-captions "Book-Entry Only System" and "DTC" with respect to The Depository Trust Company), and "Plan of Financing," insofar as such statements contained under such captions purport to summarize certain matters set forth therein and certain provisions of the Ordinance, are complete and accurate and present a fair summary of the matters referred to therein;

(5) An opinion, dated the date of Closing and addressed to the Underwriter, of Steptoe & Johnson, PLLC, counsel for the City, to the effect that (i) the City has complied with all requirements of the Act that must be satisfied upon and subsequent to issuance of the Bonds, (ii)

any requirement as to legal matters as the Underwriter shall reasonably require, (iii) no litigation is pending, or to their knowledge, threatened in any court in any way affecting the existence of the City or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the issuance or delivery of the Bonds, or the collection of revenues and assets of the City pledged or to be pledged to pay the principal of and interest on the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Bonds, the Ordinance or this Purchase Contract, or contesting the powers of the State with respect to the Bonds, the Ordinance or this Purchase Contract or any transaction described in or contemplated by the Official Statement, (iv) that the Official Statement, as amended or supplemented to the date of Closing (except as aforesaid) contains no untrue statement regarding the City of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein regarding the City, in light of the circumstances under which they were made, not misleading, and (v) the statements contained in the Official Statement under the caption "The City of Charleston," insofar as such statements contained under such caption purport to summarize certain matters set forth therein and certain provisions of the Ordinance, are complete and accurate and present a fair summary of the matters referred to therein;

(6) Duly authorized and executed copies of the Continuing Disclosure Certificate, in substantially the form attached as Appendix C to the Official Statement and incorporated herein, which complies with the provisions of Rule 15c2-12(b)(5);

(7) Two counterpart originals of a transcript of all proceedings relating to the authorization and issuance of the Bonds, certified by the Mayor of the City;

(8) An opinion of Steptoe & Johnson, PLLC to the effect that (i) no litigation is pending, or to his or her knowledge, threatened in any court in any way affecting the existence of the City or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the issuance or delivery of the Bonds, or the collection of revenues and assets of the City pledged or to be pledged to pay the principal of and interest on the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Bonds, the Ordinance or this Purchase Contract, or contesting the powers of the City with respect to the Bonds, the Ordinance or this Purchase Contract or any transaction described in or contemplated by the Official Statement, (ii) the statements contained in the Official Statement under the caption "The City," insofar as such statements contained under such caption purport to summarize certain matters set forth therein and certain provisions of the Ordinance, are complete and accurate and present a fair summary of the matters referred to therein, and (iii) such other matters as the Underwriter shall reasonably require;

(9) An opinion, dated the date of the Closing and addressed to the Underwriter, of Goodwin & Goodwin, LLP, Underwriters' Counsel, to the effect that (i) this Purchase Contract has been duly authorized, executed and delivered by, and (assuming due authorization, execution and delivery by the other parties and that it is a binding agreement of the other parties in accordance with its terms) constitutes a binding agreement in accordance with its terms of, the Underwriter; (ii) the Continuing Disclosure Certificate complies as to form in all material respects with the requirements of paragraph (b)(5) of the Rule; and (iii) that nothing has come to our attention that the Official Statement, as amended or supplemented to the date of Closing (except as aforesaid) contains no untrue statement of a material fact or omits to state a material fact required to be stated

therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(10) Such additional legal opinions, certificates, instruments and other documents as the Underwriter or their counsel, Goodwin & Goodwin, LLP, reasonably may deem necessary or advisable to evidence the truth and accuracy, as of the date hereof and as of the date of the Closing, of the City's representations and warranties contained herein and of the statements and information contained in the Official Statement and the due performance or satisfaction by the City on or prior to the date of the Closing of all agreements then to be performed and all conditions then to be satisfied by the City;

All of the opinions, letters, instruments and other documents mentioned above or elsewhere in this Purchase Contract shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Underwriter and to Goodwin & Goodwin, LLP, counsel to the Underwriter.

If you shall be unable to satisfy the conditions of the obligations of the Underwriter contained in this Purchase Contract, or if the obligations of the Underwriter shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and neither the Underwriter nor you shall be under further obligation hereunder, and the respective obligations of you and the Underwriter for the payment of expenses, as provided in Paragraph 9 hereof, shall continue in full force and effect.

9. (a) The Issuer will pay or cause to be paid from proceeds of the Bonds or otherwise (i) fees and expenses of bond counsel, counsel to the Issuer, and Underwriters' counsel; (ii) initial fees of the Registrar; (iii) costs of preparing, printing, mailing and delivering the Preliminary Official Statement and the Official Statement and any amendments or supplements thereto; (iv) fees and expenses of the Issuer and its counsel, title insurance fees, and (v) any other costs and expenses of the issue not set forth in (b) below.

(b) The Underwriter will pay (i) sales commissions associated with marketing the Bonds; (ii) costs of qualification of the Bonds for sale under the securities or "Blue Sky" laws of various jurisdictions; (iii) initial fees relating to The Depository Trust Company; and (iv) costs and expenses incurred by the Underwriter in connection with the preparation, offering and distribution of the Bonds, including but not limited to advertising, local and long distance telephone, and travel expenses, as well as management fees in connection with such offering.

10. Any notice or other communication to be given to you under this Purchase Contract may be given by delivering the same in writing at your address set forth above, and any notice or other communication to be given to the Underwriter under this Purchase Contract may be given by delivering the same in writing to Crews & Associates, Inc., 300 Summers Street, Suite 930, Charleston, West Virginia 25301, Attention: Gregory B. Isaacs.

11. This Purchase Contract is made solely for the benefit of you and the Underwriter and no other person shall acquire or have any right hereunder or by virtue hereof. All your representations, warranties and agreements in this Purchase Contract shall remain operative and in

full force and effect, regardless of (a) any investigation made by or on behalf of the Underwriter, (b) delivery of, and payment for, the Bonds hereunder, and (c) any termination of this Purchase Contract.

12. All of the City's representations, warranties and agreements shall remain operative and in full force and effect regardless of any investigations made by the Underwriter or on its behalf, and shall survive delivery of the Bonds to the Underwriter.

13. This Purchase Contract shall be construed and enforceable in accordance with the laws of the State of West Virginia and may not be assigned by the parties hereto.

Very truly yours,

CREWS & ASSOCIATES, INC., on behalf of itself and FERRIS, BAKER WATTS, INCORPORATED

By _____
Vice President

CITY OF CHARLESTON

By: _____
Mayor

EXHIBIT A

| Maturity | Type of Bond | Coupon | Yield | Maturity Value | Price | Dollar Price |
|---|---|---|---|---|---|---|
| | | | | | | |
| Total | - | - | - | $ | - | $ |

# EXHIBIT E

Form of

## Continuing Disclosure Certificate

## CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Certificate"), dated as of February 1, 2005, is provided by The City of Charleston, West Virginia (the "City"), under the terms of an Ordinance enacted by the City on February 7, 2005 (the "Ordinance"), authorizing the issuance of the $2,620,000 City of Charleston, Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes"), and when, as and if issued, the $2,620,000 City of Charleston, Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds" and, together with the Series 2005 Notes, the "Series 2005 Bonds"). The Series 2005 Bonds were sold pursuant to the terms of a Bond Purchase Agreement dated February __, 2005, by and between the Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (collectively, the "Underwriters") and the City. Capitalized terms used in this Certificate shall have the respective meanings specified above or in Article IV hereof. The parties agree as follows:

### ARTICLE I

### The Undertaking

Section 1.1. Purpose. This Certificate shall constitute a written undertaking for the benefit of the holders of the Series 2005 Bonds and is being executed and delivered solely to assist the Underwriters in complying with subsection (b)(1) of the Rule.

Any filing under this Certificate may be made solely by transmitting such filing to the Texas Municipal Advisory Council (the "Central Post Office" or "MAC") as provided at http://www.disclosureusa.org unless the United States Securities and Exchange Commission has withdrawn the interpretive advice in its letter to the MAC dated September 7, 2004.

Section 1.2. Annual Financial Information. (a) The City shall provide Annual Financial Information with respect to each fiscal year of the City, commencing with the fiscal year ended June 30, 2005, by no later than 180 days after the end of each fiscal year, to the Central Post Office for delivery to each NRMSIR and the SID.

(b) The City shall provide, in a timely manner, notice of any failure of the City to provide the Annual Financial Information by the date specified in subsection (a) above to the Central Post Office for delivery to (i) either the MSRB or each NRMSIR, and (ii) the SID.

Section 1.3. Material Event Notices. (a) If a Material Event occurs, the City shall provide, in a timely manner, notice of each Material Event to the Central Post Office for delivery to (i) either the MSRB or each NRMSIR, (ii) the SID, and (iii) the Underwriters.

(b) Any notice of defeasance of the Series 2005 Bonds shall state whether the Series 2005 Bonds have been escrowed to maturity or to an earlier redemption date and the timing of such maturity or redemption.

Section 1.4. Additional Disclosure Obligations. The City acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of

1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the City and that, under some circumstances, additional disclosures or other action in addition to those required by this Certificate may be required to enable the City to fully discharge all of its duties and obligations under such laws.

Section 1.5. Additional Information. Nothing in this Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Certificate or any other means of communication, or including any other information in any Annual Financial Information or notice of Material Event hereunder, in addition to that that is required by this Certificate. If the City chooses to do so, the City shall have no obligation under this Certificate to update such additional information or include it in any future Annual Financial Information or notice of a Material Event hereunder.

Section 1.6. No Previous Non-Compliance. The City represents that since December 1, 2004, it has not failed to comply in any material respect with any previous undertaking in a written contract or certificate, as entered into or issued by the City, specified in paragraph (b)(5)(i) of the Rule.

## ARTICLE II

## Operating Rules

Section 2.1. Reference to Other Documents. It shall be sufficient for purposes of this Certificate if the City provides Annual Financial Information by specific reference to documents (i) either (1) provided to the Central Post Office for delivery to each NRMSIR existing at the time of such reference and the SID or (2) filed with the SEC, or (ii) if such document is an Official Statement, available from the MSRB.

Section 2.2. Submission of Information. Annual Financial Information may be provided in one document or multiple documents, and at one time or in part from time to time.

Section 2.3. Transmission of Information and Notices. Unless otherwise required by law, the City shall employ such methods of information and notice transmission as it shall so determine. All deliveries to the Central Post Office shall be by electronic transmission at the website for the Central Post Office.

Section 2.4. Fiscal Year. The City's current fiscal year is the twelve-month period ending on June 30. The City shall promptly notice (i) the Central Post Office for delivery to each NRMSIR and the SID and (ii) the Underwriters of each change in its fiscal year.

## ARTICLE III

## Effective Date, Termination, Amendment and Enforcement

Section 3.1. Effective Date; Termination. (a) This Certificate shall be effective upon the issuance of the Series 2005 Bonds.

(b) The City's obligations under this Certificate shall terminate upon a legal defeasance, prior redemption or payment in full of all of the Series 2005 Bonds.

(c) This Certificate, or any provision hereof, shall be null and void in the event that the City (1) delivers to the Trustee an opinion of Counsel, addressed to the City and the Trustee, to the effect that those portions of the Rule which require this Certificate, or such provision, as the case may be, do not or no longer apply to the Series 2005 Bonds, whether because such portions of the Rule are invalid, have been repealed, or otherwise, as shall be specified in such opinion, and (2) delivers copies of such opinion to the Central Post Office for delivery to each NRMSIR and the SID.

Section 3.2. Amendment. (a) This Certificate may be amended, by written Agreement of the City, without the consent of the holders of the Series 2005 Bonds, if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the City or the type of business conducted thereby, (2) this Certificate as so amended would have complied with the requirements of the Rule as of the date of this Certificate, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) the State shall have delivered to the Trustee an opinion of Counsel, addressed to the City and the Trustee, to the same effect as set forth in clause (2) above, (4) the City shall have delivered to the Trustee an opinion of Counsel or a determination by a person, in each case unaffiliated with the City (such as bond counsel or the Trustee) and acceptable to the City, addressed to the City and the Trustee, to the effect that the amendment does not materially impair the interests of the holders of the Series 2005 Bonds, and (5) the City shall have delivered copies of such opinion(s) and amendment to the Central Post Office for delivery to each NRMSIR and the SID.

(b) In addition to the provisions contained in subsection (a) above, this Certificate may be amended, by written Agreement of the City, without the consent of the holders of the Series 2005 Bonds, if all of the following conditions are satisfied: (1) an amendment to the Rule is adopted, or a new or modified official interpretation of the Rule is issued, after the effective date of this Certificate which is applicable to this Certificate, (2) the City shall have delivered to the Purchaser an opinion of Counsel, addressed to the City and the Trustee, to the effect that performance by the City under this Certificate as so amended will not result in a violation of the Rule, and (3) the City shall have delivered copies of such opinion and amendment to the Central Post Office for delivery to each NRMSIR and the SID.

(c) To the extent any amendment to this Certificate results in a change in the type of financial information or operating data provided pursuant to this Certificate, the first Annual Financial Information provided thereafter shall include a narrative explanation of the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

(d) If an amendment is made pursuant to Section 3.2(a) hereof due to a change in the accounting principles to be followed by the City in preparing its financial statements, the Annual Financial Information for the fiscal year in which the change is made shall provide written explanation of such change or changes.

Section 3.3. Benefit; Third-Party Beneficiaries; Enforcement. (a) The provisions of this Certificate shall inure solely to the benefit of the holders from time to time of the Series 2005 Bonds, except that beneficial owners of Series 2005 Bonds shall be third-party beneficiaries of this Certificate and shall be deemed to be holders of Series 2005 Bonds for purposes of Section 3.3(b) hereof. The provisions of this Certificate shall create no rights in any person or entity except as provided in this subsection (a).

(b) The obligations of the City to comply with the provisions of this Certificate shall be enforceable (i) in the case of enforcement of obligations to provide Annual Financial Information and Material Event notices, by any holder of Outstanding Bonds, or by the Trustee on behalf of the holders of Outstanding Bonds, or (ii), in the case of challenges to the adequacy of the Annual Financial Information so provided, by the Trustee on behalf of the holders of Outstanding Bonds; provided, however, that the Trustee shall not be required to take any enforcement action except at the direction of the holders of not less than 25% in aggregate principal amount of the Series 2005 Bonds at the time Outstanding who shall have provided the Trustee with adequate security and indemnity. The holders' and Trustee's rights to enforce the provisions of this Certificate shall be limited solely to right, by action in mandamus or for specific performance, to compel performance of the City's obligations under this Certificate.

(c) Any failure by the City or the Trustee to perform in accordance with this Certificate shall not constitute a default or an Event of Default under the Ordinance, and the rights and remedies provided by the Ordinance upon the occurrence of a default or an Event of Default shall not apply to any such failure.

(d) This Certificate shall be construed and interpreted in accordance with the laws of the State of West Virginia, and any suits and actions arising out of this Certificate shall be instituted in a court of competent jurisdiction in the State of West Virginia; provided, however, that to the extent this Certificate addresses matters of federal securities laws, including the Rule, this Certificate shall be construed in accordance with such federal securities laws and official interpretations thereof.

## ARTICLE IV

## Definitions

Section 4.1. Definitions. The following items used in this Certificate shall have the following respective meanings:

(a) "Annual Financial Information" means, collectively (i) the City's Comprehensive Annual Financial Report (or any successive document which sets forth comprehensive information relating to the financial position of the City) and (ii) the information

regarding amendments to this Certificate required pursuant to Sections 3.2(c) and (d) of this Certificate. Annual Financial Information shall include Audited Financial Statements, if available, or Unaudited Financial Statements.

(b) "Audited Financial Statements" means the annual financial statements, if any, of the City, audited by such auditor as shall then be required or permitted by West Virginia law. Audited Financial Statements shall be prepared in accordance with GAAP.

(c) "Central Post Office" shall mean the Texas Municipal Advisory Council, which shall receive Annual Reports and Listed Events and then electronically transmit them to the NRMSIRs and the State Repository.

(d) "Counsel" means Jackson Kelly PLLC, Charleston, West Virginia, or other nationally recognized bond counsel or counsel expert in federal securities law.

(e) "GAAP" means generally accepted accounting principles as prescribed from time to time for governmental units by the Governmental Accounting Standards Board, the Financial Accounting Standards Board, or any successor to the duties and responsibilities of either of them.

(f) "Material Event" means any of the following events with respect to the Series 2005 Bonds, whether relating to the City or otherwise, if material:

(i) principal and interest payment delinquencies;
(ii) non-payment related defaults;
(iii) unscheduled draws on debt service reserves reflecting financial difficulties;
(iv) unscheduled draws on credit enhancements reflecting financial difficulties;
(v) substitution of credit or liquidity providers, or their failure to perform;
(vi) adverse tax opinions or events affecting the tax-exempt status of the Series 2005 Bonds;
(vii) modifications to rights of security holders;
(viii) bond calls;
(ix) defeasances;
(x) release, substitution or sale of property securing repayment of the Series 2005 Bonds; and
(xi) rating changes.

(g) "MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934.

(h) "NRMSIR" means, at any time, a then-existing nationally recognized municipal securities information repository, as recognized from time to time by the SEC for the purposes referred to in the Rule. The NRMSIRs as of the date of this Certificate are Bloomberg

Municipal Repository, DPC Data, Inc., FT Interactive Data and Standard & Poor's J. J. Kenny Repository. Filing information relating to such NRMSIRs is set forth in Exhibit B hereto.

(i) "Official Statement" means "final official statement," as defined in paragraph (f)(3) of the Rule.

(j) "Rule" means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934 (17 CFR Part 240, § 240.15c2-12), as in effect on the date of this Certificate, including any official interpretations thereof issued either before or after the effective date of this Certificate which are applicable to this Certificate.

(k) "SEC" means the United States Securities and Exchange Commission.

(l) "SID" means, at any time, a then-existing state information depository, if any, as operated or designated as such by or on behalf of the State of West Virginia for the purposes referred to in the rule. As of the date of this Certificate, there is no SID.

(m) "Unaudited Financial Statements" means the same as Audited Financial Statements, except that they shall not have been audited.

## ARTICLE V

## Miscellaneous

Section 5.1. Severability. If any one or more sections, clauses, sentences or parts hereof shall for any reason be questioned in any court of competent jurisdiction and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions hereof or thereof, or the Series 2005 Bonds, but shall be confined to the specific sections, clauses, sentences and parts so adjudged.

IN WITNESS WHEREOF, the City has caused this Certificate to be executed by its duly authorized representative as of the date first above written.

THE CITY OF CHARLESTON

By: _____
Mayor

EXHIBIT A

NOTICE TO REPOSITORIES
OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: City of Charleston

Name of Bond Issue: $2,620,000 City of Charleston, Parking System
Bond Anticipation Notes, Series 2005, and when, as and if issued,
$2,620,000 City of Charleston, Parking System Refunding
Revenue Bonds, Series 2005 B

Date of Bond Issue: February 1, 2005, as to the Series 2005 Notes
April 1, 2005, as to the Series 2005 B Bonds

NOTICE IS HEREBY GIVEN that the City has not provided an Annual Report with respect to the above-named Series 2005 Bonds as required by Section 3(b) of this Continuing Disclosure Certificate dated as of February 1, 2005, to be provided. The City anticipates that the Annual Report will be filed by _____, 200_

Dated: _____, 20__

The City of Charleston, West Virginia

By: _____
Mayor

EXHIBIT B

Nationally Recognized Municipal Securities Information Repositories approved by the Securities and Exchange Commission as of February 1, 2005:

Central Post Office
Website: http://www.disclosureusa.org

Bloomberg Municipal Repository
100 Business Park Drive
Skillman, New Jersey 08558
Phone: (609) 279-3225
Fax: (609) 279-5962
http://www.bloomberg.com/markets/muni_contactinfo.html
Email: Munis@Bloomberg.com

DPC Data Inc.
One Executive Drive
Fort Lee, NJ 07024
Phone: (201) 346-0701
Fax: (201) 947-0107
http://www.dpcdata.com
Email: nrmsir@dpcdata.com

FT Interactive Data
Attn: NRMSIR
100 William Street
New York, New York 10038
Phone: (212) 771-6999
Fax: (212) 771-7390 (Secondary Market Information)
(212) 771-7391 (Primary Market Information)
http://www.interactivedata.com
Email: NRMSIR@FTID.com

Standard & Poor's J. J. Kenny Repository
55 Water Street
45th Floor
New York, NY 10041
Phone: (212) 438-4595
Fax: (212) 438-3975
www.jjkenny.com/jjkenny/pser_descrip_data_rep.html
Email: nrmsir_repository@sandp.com

# EXHIBIT F

Form of

Preliminary Official Statement

This Preliminary Official Statement and the information contained herein are subject to completion and amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy. Nor shall there be any sale of these securities, in any jurisdiction in which such offer, solicitation or sale would be unlawful, prior to registration or qualification under the securities laws of such jurisdiction.

# PRELIMINARY OFFICIAL STATEMENT DATED FEBRUARY 2, 2005

NEW ISSUE-Full Book Entry

*In the opinion of Bond Counsel, interest on the Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes") and the Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds" and, together with the Series 2005 Notes, the "Bonds") are excludable from the gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and such interest will not be treated as a preference item for purposes of the alternative minimum tax imposed under the Code with respect to individuals and corporations. Under the Code, however, such interest is included in the adjusted current earnings of a corporation for the purposes of computing the alternative minimum tax. In addition, under the Act, the Bonds and the interest thereon are exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof (see, "TAX EXEMPTION" herein).*

## $2,620,000*
## THE CITY OF CHARLESTON, WEST VIRGINIA
## PARKING SYSTEM BOND ANTICIPATION NOTES, SERIES 2005

## AND
## WHEN, AS AND IF ISSUED**

## $2,620,000*
## THE CITY OF CHARLESTON, WEST VIRGINIA
## PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B

**Dated:** February 1, 2005, as to the Series 2005 Notes
April 1, 2005**, as to the Series 2005 B Bonds

**Due:** As shown on inside cover

The Bonds will be issued in fully registered form only and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York. DTC will act as securities depository for the Bonds. Individual purchases will be made in book-entry form only in the principal amount of five thousand dollars ($5,000) or integral multiples thereof. Purchasers of the Bonds will not receive certificates representing their interests in the Bonds. See "DESCRIPTION OF BONDS—Book-Entry Only System" herein.

The Bonds will be issued for the purpose of refinancing, together with other funds available therefore, the existing debt incurred in funding or refunding the construction of a portion of a municipal parking system, funding reserve accounts and paying costs of issuance. The proceeds of the Series 2005 Notes will be used to defease and refund The City of Charleston (the "City") Parking System Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds"), dated June 1, 1993, issued in the original principal amount of $5,235,000 and currently outstanding in the principal amount of $3,000,000. The Series 2005 B Bonds, when, as and if issued, will redeem the Series 2005 Notes.

The Series 2005 Notes will be unsecured. The Series 2005 B Bonds will be secured by a lien on the net revenue of the City's parking system (the "Parking System"), on parity with the City's proposed $8,935,000 Parking System Refunding Revenue Bonds, Series 2005 A Bonds (the "Series 2005 A Bonds"), and a statutory mortgage lien on the Parking System. See, "FINANCING PLAN" herein.

Interest on the Series 2005 Notes will accrue from February 1, 2005, and will be payable on June 1 and December 1 of each year beginning June 1, 2005, and principal shall be payable annually on June 1 of each year beginning June 1, 2005. Interest on the Series 2005 B Bonds, if issued, will accrue from April 1, 2005, and will be payable on June 1 and December 1 of each year beginning June 1, 2005, and principal shall be payable annually on June 1 of each year beginning June 1, 2005. The principal of and interest on the Bonds are payable by the Paying Agent to DTC, which will in turn remit such principal and interest to its Participants for subsequent distribution to the Beneficial Owners of the Bonds, as described herein.

The Series 2005 Notes are subject to optional and mandatory redemption and mandatory tender as more fully described herein. The Series 2000B Bonds are subject to optional and mandatory redemption as more fully described herein. (see "DESCRIPTION OF BONDS").

This cover page contains certain information for quick reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain an informative investment decision.

THE SERIES 2005 NOTES ARE UNSECURED AND ARE PAYABLE SOLELY FROM THE PROCEEDS OF THE SERIES 2005 B BONDS, WHEN, AS AND IF ISSUED, ARE NOT SECURED BY THE NET REVENUES OF THE PARKING SYSTEM, AND DO NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE CITY OF CHARLESTON, WEST VIRGINIA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS OR LIMITATIONS.

THE SERIES 2005 B BONDS, IF ISSUED, WILL BE PAYABLE FROM AND SECURED BY A LIEN, ON PARITY WITH THE SERIES 2005 A BONDS, ON THE NET REVENUES OF THE PARKING SYSTEM DERIVED FROM THE OPERATION OF THE PARKING SYSTEM, AND DO NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE CITY OF CHARLESTON, WEST VIRGINIA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS OR LIMITATIONS.

The Series 2005 Notes and the Series 2005 B Bonds are offered when, as and if issued and received, subject to the approval of their legality by Jackson Kelly PLLC, Charleston, West Virginia, Bond Counsel, and to certain other conditions. Certain legal matters will be passed on for the City by Steptoe & Johnson, PLLC, Charleston, West Virginia, and for the Underwriters by Goodwin & Goodwin, LLP, Charleston, West Virginia. It is expected that the Series 2005 Notes will be available for delivery at DTC, New York, New York, on or about February __, 2005. It is expected that the Series 2005 B Bonds, when, as and if issued, will be available for delivery at DTC, New York, New York, on or about April __, 2005.

(Maturity Schedule on Inside Cover)

**Crews & Associates, Inc.** **Ferris, Baker Watts, Incorporated**

Dated: February __, 2005

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* Preliminary, subject to change.
** The Series 2005 B Bonds, if issued, shall be dated April 1, 2005.

## MATURITY SCHEDULE

Dated: February 1, 2005 Due: June 1, 2005, as shown below

SERIES 2005 NOTES
MATURITY, AMOUNT, INTEREST RATE AND PRICE OR YIELD*
$_,___,000 Serial Notes

| Principal Maturity | Interest Amount | Price or Rate | Yield |
|---|---|---|---|
| 2005 | $___,000 | ____% | _____% |
| 2006 | $___,000 | ____% | _____% |
| 2007 | $___,000 | ____% | _____% |
| 2008 | $___,000 | ____% | _____% |
| 2009 | $___,000 | ____% | _____% |
| 2010 | $___,000 | ____% | _____% |
| 2011 | $___,000 | ____% | _____% |
| 2012 | $___,000 | ____% | _____% |

$_,___,000 __% Term Note Due June 1, 20__ Price ___%
$_,___,000 __% Term Note Due June 1, 20__ Price ___%
(accrued interest to be added)

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Dated: April 1, 2005 Due: June 1, as shown below

SERIES 2005 B BONDS**
MATURITY, AMOUNT, INTEREST RATE AND PRICE OR YIELD*
$_,___,000 Serial Bonds

| Principal Maturity | Interest Amount | Price or Rate | Yield |
|---|---|---|---|
| 2005 | $___,000 | ____% | _____% |
| 2006 | $___,000 | ____% | _____% |
| 2007 | $___,000 | ____% | _____% |
| 2008 | $___,000 | ____% | _____% |
| 2009 | $___,000 | ____% | _____% |
| 2010 | $___,000 | ____% | _____% |
| 2011 | $___,000 | ____% | _____% |
| 2012 | $___,000 | ____% | _____% |

$_,___,000 __% Term Bond Due June 1, 20__ Price ___%
$_,___,000 __% Term Bond Due June 1, 20__ Price ___%
(accrued interest to be added)

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* Preliminary, subject to change.
** When, as and if issued.

$2,620,000*
THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM BOND ANTICIPATION NOTES,
SERIES 2005

AND
WHEN, AS AND IF ISSUED

$2,620,000*
THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

## INTRODUCTION

This Official Statement, including the cover page (excluding prices), and Appendices hereto, is provided for the purpose of setting forth certain information concerning The City of Charleston, West Virginia (the "City"), the City's municipal parking system hereinafter described, the City's $2,620,000* Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes") and, when, as and if issued, the City's $2,620,000* Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds") (the Series 2005 Notes and the Series 2005 B Bonds, collectively, the "Bonds"). The Bonds are being issued pursuant to the constitution and laws of the State of West Virginia (the "State"), specifically Chapter 8, Article 12, Chapter 8, Article 16 and Chapter 13, Article 2E (collectively, the "Act"), of the Code of West Virginia, 1931, as amended, and an Ordinance passed by City Council of the City on January 18, 2005, effective on February 7, 2005, and a supplemental resolution adopted on February 7, 2005 (the "Supplemental Resolution" and together, the "Ordinance" or "Bond Ordinance").

The Series 2005 Notes, together with other funds available therefore, are being issued to provide funds to defease and refund the City's Parking System Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds"), dated June 1, 1993, issued in the original principal amount of $5,235,000 and currently outstanding in the principal amount of $3,000,000 (the "1993 Bonds"), fund debt service reserve funds and pay the costs of issuance thereof. See "FINANCING PLAN" and "ESTIMATED SOURCES AND USES OF FUNDS". The 1993 Bonds were issued to finance or refinance the construction of a portion of the City's municipal parking facilities.

* Preliminary, subject to change.

**THE SERIES 2005 NOTES ARE UNSECURED AND PAYABLE SOLELY FROM THE PROCEEDS OF THE SERIES 2005 B BONDS, WHEN, AS AND IF ISSUED, ARE NOT SECURED BY THE NET REVENUES OF THE PARKING SYSTEM, AND DO NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE CITY OF CHARLESTON, WEST VIRGINIA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS OR LIMITATIONS.**

The Series 2005 B Bonds, when, as and if issued, will be secured by a lien on the net revenue of the City's parking system, as defined below, and by a statutory mortgage lien on the Parking System. The Series 2005 B Bonds will be issued on parity with the City's proposed $8,935,000* Parking System Refunding Revenue Bonds, Series 2005 A (the "Series 2005 A Bonds"), which, together with other funds available therefore, will be issued to provide funds to defease and refund the City's Parking System Revenue Bonds, Series 1994 A, dated December 15, 1994, issued in the original principal amount of $4,545,000, and currently outstanding in the principal amount of $3,720,000, Parking System Subordinate Revenue Bonds, Series 1994 B, dated December 15, 1994, issued in the original principal amount of $5,455,000, and currently outstanding in the principal amount of $4,035,000 and Parking System Subordinate Revenue Bonds, Series 1995, dated January 1, 1995, issued in the original principal amount of $1,620,000, and currently outstanding in the principal amount of $1,195,000 (collectively, the "Series 1994 and Series 1995 Bonds"). See, "FINANCING PLAN" herein.

Upon issuance of the Series 2005 A Bonds, the Series 2005 B Bonds, if issued, will be payable from and secured by the Net Revenues, as defined in the Ordinance, to be derived from the existing on-street and off-street parking system of the City, together with any extensions and improvements thereto (collectively, the "Parking System"), by a statutory mortgage lien on the Parking System, and from funds on deposit in the Series 2005 B Bonds Reserve Account. The Series 2005 B Bonds will not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, and the City shall not be obligated to pay the Series 2005 B Bonds or any premium or the interest thereon except from such Net Revenues and such funds on deposit. Pursuant to the Ordinance, the City has covenanted and agreed to fix, establish and maintain such rates and collect such fees, rentals or other charges for the services and facilities of the Parking System, and revise the same from time to time whenever necessary, to always provide revenues in each fiscal year at least sufficient to pay one hundred fifteen percent (115%) of the largest amount of principal and interest maturing and becoming due on the Series 2005 B Bonds then outstanding in any succeeding fiscal year, in addition to paying, as the same become due, the necessary expenses of repair (including replacement), maintenance and operation of the Parking System in each fiscal year, and all obligations or indebtedness other than the Series 2005 B Bonds payable out of revenues of the Parking System in such fiscal year. See "Additional Security for the Series 2005 B Bonds - Rate Covenant."

* Preliminary, subject to change.

Brief descriptions of the Bonds, the Ordinance, the Parking System, Financial Operations, the City and certain provisions of the Act are set forth in this Official Statement as well as other information contained in the appendices hereto. Such descriptions and information do not purport to be comprehensive or definitive. All references herein to the Ordinance, provisions of the Act, or other applicable laws of the State are qualified in their entirety by reference to each such document. Reference herein to the Bonds are qualified in their entirety by reference to the form thereof included in the Ordinance and the information with respect thereto included in the aforesaid documents.

## FINANCING PLAN

The proceeds of the Series 2005 Notes will be used to refund and defease the 1993 Bonds. The Series 2005 A Bonds will be issued to refund and defease the Series 1994 and Series 1995 Bonds. Following the refunding and defeasance of the Series 1994 and Series 1995 Bonds, the Series 2005 Notes shall be called by the City, and the City shall deliver the Series 2005 B Bonds in exchange for the Notes. The Act authorizes the imposition of a statutory mortgage lien on the Parking System.

In addition to debt service savings, the refinancing has other benefits that are important to the operation of the Parking System. At closing on the issuance of the Series 2005 A Bonds, the City will transfer $1,000,000 from the Repair, Maintenance and Operation Fund that was established upon issuance of the 1993 Bonds. (Following the issuance of the Series 2005 A Bonds, the amount required to be on deposit in the Repair, Maintenance and Operation Fund will be $200,000 as required by the Ordinance.) The funds will be used to acquire two (2) additional parking lots, containing a total of two hundred twenty-eight (228) parking spaces, in the vicinity of a new baseball stadium currently under construction, which will be added to the Parking System. The additional revenues from the new parking lots will enhance the City's ability to meet the debt service coverage requirement. Finally, the letter of credit requirement and the associated annual letter of credit fees that are applicable to the Series 1994 and 1995 Bonds will be eliminated upon the issuance of the Series 2005 A Bonds.

The cost of refunding and defeasing the 1993 Bonds is $3,064,312.64. The City plans to fund the Series 2005 B Bonds Reserve Account in full at closing. A portion of the proceeds of the Series 2005 Notes sufficient to refund and defease the 1993 Bonds will be deposited at closing with the West Virginia Municipal Bond Commission, as Escrow Agent, and will be applied to refund and defease the 1993 Bonds. Verification of certain mathematical computations relating to the payment from the Escrow Fund of principal of, premium, if any, and interest on the 1993 Bonds until the date the Notes will be exchanged, and the refunding of the 1993 Bonds is completed, will be performed by Smith, Cochran & Hicks, P.L.L.C., Charleston, West Virginia, certified public accountants.

## ESTIMATED SOURCES AND USES OF FUNDS

The sources and uses of funds, exclusive of accrued interest, are estimated to be as follows:

Series 2005 Note

Sources of Funds

| | |
|---|---|
| Principal Amount of Note | $_____ |
| Transfer from 1993 Sinking Fund | ___,___.__ |
| Transfer from 1993 Debt Service Reserve Fund | ___,___.__ |
| Total | $_,___,___.__ |

Uses of Funds

| | |
|---|---|
| Series 1993 Escrow Fund (1) | $_,___,___.__ |
| Original Issue Discount | |
| Debt Service Reserve Requirement (2) | |
| Underwriters' Discount | |
| Cost of Issuance | |
| Total | $_,___,___.__ |

(1) The Series 1993 Escrow Fund will be held by the Escrow Agent and disbursed as required by the Ordinance for the repayment of the 1993 Bonds.

(2) The Debt Service Reserve Requirement is the amount equal to the maximum amount of principal and interest which will come due on the Series 2005 B Bonds in any fiscal year, when, as and if issued.

Series 2005 B Bonds, When, As and If Issued (1)

Sources of Funds

| | |
|---|---|
| Principal Amount of Series 2005 B Bonds | $_____ |
| Total | $_,___,___.__ |

Uses of Funds

| | |
|---|---|
| Note Repayment Account (2) | $_,___,___.__ |
| Debt Service Reserve Requirement (3) | |
| Total | $_,___,___.__ |

(1) This table assumes that the Series 2005 B Bonds will be issued. If the Series 2005 B Bonds are issued, the Series 2005 Notes shall be subject to mandatory tender to the Paying Agent on or about April 1, 2005, at a price of par plus accrued interest to such date, such amounts

payable from funds on deposit with the Escrow Agent.

(2) The Note Repayment Account will be held by the Escrow Agent and disbursed as required by the Ordinance for the repayment of the Notes.

(3) The Debt Service Reserve Requirement is an amount equal to the maximum amount of principal and interest which will come due on the Series 2005 B Bonds in any fiscal year.

## DESCRIPTION OF BONDS

### The Bonds

The Bonds are available in book-entry form only. See "Book-Entry Only System" below. So long as Cede & Co. is the registered owner of the Bonds as nominee of The Depository Trust Company, New York, New York, references herein to the Bondholders or registered owners of the Bonds shall mean Cede & Co. and shall not mean the beneficial owners of the Bonds. The West Virginia Municipal Bond Commission, Charleston, West Virginia, shall be the Paying Agent ("Paying Agent") and United Bank, Inc., in Charleston, West Virginia, shall be the Registrar for the Bonds (the "Registrar").

The principal of, premium, if any, and interest on the Bonds will be payable at the office of the Paying Agent.

The Series 2005 Notes will be dated February 1, 2005. When, as and if issued, the Series 2005 B Bonds will be dated April 1, 2005.

Interest on the Series 2005 Notes will accrue from February 1, 2005, and will be payable on June 1 and December 1 of each year beginning June 1, 2005, and principal shall be payable annually on June 1 of each year beginning June 1, 2005. Subject to the issuance of the Series 2005 B Bonds, the Series 2005 Notes will mature on April 1, 2005. The Series 2005 B Bonds, when, as and if issued, will bear interest at the rates and mature in the amounts set forth on the cover page of this Official Statement. Interest on the Series 2005 B Bonds will accrue from April 1, 2005, and will be payable on June 1 and December 1 of each year beginning June 1, 2005, and principal shall be payable annually on June 1 of each year beginning June 1, 2005.

The Series 2005 B Bonds shall be payable as to principal at the office of the Paying Agent in any coin or currency which on the respective date of payment of principal and interest, is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2005 B Bonds shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address that appears on the books of the Registrar or, in the event of a default in the payment on the Series 2005 B Bonds, that special record date to be fixed by the Registrar by notice given to the Registered Owners not less than ten (10) days prior to said special record date (the "Special Record Date") or, if requested in the case of such an owner of $1,000,000 or more in principal amount of Series 2005 B Bonds, by wire transfer to a domestic bank account specified in writing at least five (5) days prior to the Record Date by such owner.

**Mandatory Tender of Note**

By its purchase of the Notes, each Notes holder shall unconditionally and irrevocably agree, upon the authentication and issuance of the Series 2005 B Bonds in accordance with the provisions of the Ordinance and delivery of the Series 2005 B Bonds Bond Counsel Opinion as provided in the Ordinance, and in substantially the form attached as Appendix D hereto, on or about April 1, 2005, to tender on such date its Notes in exchange for the Series 2005 B Bonds in a principal amount equal to the then Outstanding principal amount of its Notes. If the exchange of Notes for Series 2005 B Bonds has not been completed by April 1, 2005, the City shall have a period of sixty (60) days within which to establish a new date for such tender and to complete the same.

**Series 2005 B Bonds - Optional Redemption**

The Series 2005 B Bonds are not subject to optional redemption prior to June 1, 20__. At the option of the City, the Series 2005 B Bonds will be subject to redemption prior to maturity on or after June 1, 20__, as a whole at any time and in part on any interest payment date, in inverse order of maturity and by random selection within maturities if less than all of any maturity, at a redemption price (expressed as a percentage of the principal amount) set forth below, plus interest accrued to the date fixed for redemption:

| Period During Which Redeemed | Redemption Price |
|---|---|
| June 1, 20__ through May 31, 20__ | ___% |
| June 1, 20__ through May 31, 20__ | ___% |
| June 1, 20__ and thereafter | ___% |

**Mandatory Sinking Fund Redemption**

The Series 2005 Notes maturing on June 1, 20__ ("Term Note"), is subject to annual mandatory redemption prior to maturity by random selection in accordance with the requirements of the Bond Ordinance at the principal amount thereof plus interest accrued to the date fixed for redemption, on June 1 of each of the years and in the principal amount set forth below:

20__ Term Note

| Year | Principal Amount |
|---|---|
| 20__ | $___,000 |
| 20__ | ___,000 |

The Series 2005 B Bonds maturing on June 1, 20__ ("Term Bonds"), are subject to annual mandatory redemption prior to maturity by random selection in accordance with the requirements of the Bond Ordinance at the principal amount thereof plus interest accrued to the date fixed for

redemption, on June 1 of each of the years and in the principal amount set forth below:

20__ Term Bonds

| Year | Principal Amount |
|---|---|
| 20__ | $___,000 |
| 20__ | ___,000 |

**Manner of Redemption and Tender**

With respect to mandatory redemption of the Notes, within seven (7) business days following the issuance and delivery of the Series 2005 B Bonds under the Ordinance or at least sixteen (16) days following the refunding and defeasance of the Series 1994 and Series 1995 Bonds, the Paying Agent will mail to the persons who were Notes holders immediately prior to the issuance of the Series 2005 B Bonds by first class mail, postage prepaid, at the address of each Notes holder shown on the Bond Register whose Notes have been redeemed under the mandatory redemption provisions of the Ordinance and for whom a corresponding Series 2005 B Bond has been purchased under the Ordinance, a notice setting forth the information provided in the Ordinance with respect to the Notes redeemed and advising such holder that upon the surrender of such holders' Notes to the Paying Agent, the Paying Agent will deliver to such Notes holder the Series 2005 B Bond purchased on its behalf. Such notice shall provide the address of the Paying Agent to which Notes are to be presented.

**Notice of Redemption**

The Paying Agent shall cause notice of any redemption of Series 2005 B Bonds to be mailed by first class mail to the Owners of all Series 2005 B Bonds to be redeemed at the addresses thereof appearing in the Registration Books. Each such notice shall (i) be mailed not more than 60 days nor less than 30 days prior to the redemption date, (ii) identify the Series 2005 B Bonds to be redeemed (specifying the CUSIP numbers, if any, assigned to the Series 2005 B Bonds), (iii) specify the redemption date and the Redemption Price, and (iv) state that on the redemption date the Series 2005 B Bonds called for redemption will be payable at the principal corporate trust office of the Paying Agent, that from that date the Series 2005 B Bonds called for redemption will be deemed to be paid, and interest will cease to accrue, and that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein. Failure to give such notice of redemption (including any failure to mail such notice) shall not affect the validity of the redemption proceedings for any other Series 2005 B Bonds for which notice was properly given.

Under the requirements of the Ordinance, the City cannot redeem all or any part of the Series 2005 B Bonds unless funds are available to make such payment prior to the notice of redemption.

**Book-Entry Only System**

The Depository Trust Company, New York, New York ("DTC"), will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered Bond certificate will be issued for each maturity of each respective series of Bonds in the aggregate principal amount of each maturity and will be deposited with DTC.

DTC is a limited-purpose trust company organized under New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds securities that its participants ("Participants") deposit with DTC. DTC also facilitates the settlement among Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Rules applicable to DTC and its Participants are on file with the United States Securities and Exchange Commission.

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmation providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interest in the Bonds are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of Bonds with DTC and their registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to Cede & Co. If less than all of the Bonds within a series are being redeemed. DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. will consent or vote with respect to Bonds. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, or redemption of, and interest payments on the Bonds will be made to DTC. DTC's practice is to credit Direct Participants' accounts on the payable date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on the payable date. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Paying Agent, or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, redemption premium, if any, and interest to DTC is the responsibility of the City or the Paying Agent, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to the City or the Paying Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Bonds certificates are required to be printed and delivered.

The City may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the City believes to be reliable, but the City takes no responsibility for the accuracy thereof.

NEITHER THE CITY, THE UNDERWRITER NOR THE PAYING AGENT WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO PARTICIPANTS, TO INDIRECT PARTICIPANTS OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (I) THE ACCURACY OR ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT; (II) THE PAYMENT BY DTC OR ANY PARTICIPANT

OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OF, OR PREMIUM, IF ANY, OR INTEREST ON, THE BONDS; (III) ANY NOTICE WHICH IS PERMITTED OR REQUIRED TO BE GIVEN BY DTC TO BONDHOLDERS; (IV) ANY CONSENT GIVEN BY DTC OR OTHER ACTION TAKEN BY DTC AS BONDHOLDER; OR (V) THE SELECTION BY DTC OR ANY PARTICIPANT OR INDIRECT PARTICIPANT OF ANY BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE BONDS.

So long as the Bonds are held by DTC under a book-entry system, the Paying Agent will send any notice of redemption or other notices with respect to the Bonds required or permitted to be given under the Ordinance only to DTC. Any failure of DTC to advise any Participant, or of any Participant to notify any Indirect Participant or any Beneficial Owner of any such notice and its content or effect will not affect the validity of the proceedings for the redemption of the Bonds or of any other action permitted upon such notice. If fewer than all of the Bonds are selected for redemption, DTC will select the particular account of Participants to which the amount of such redemption will be credited in accordance with DTC's own rules or other agreements with Participants; Participants may then credit such redemption to the particular accounts of Beneficial Owners for whom such Participants act as nominee accordingly. Any such selection of Participants and Beneficial Owners to which any such partial redemption will be credited will not be governed by the Ordinance and will not be made by the City or the Paying Agent.

**Issuance of Additional Bonds**

No parity additional bonds as defined in this subsection, payable out of the Net Revenues of the Parking System, shall be issued after the issuance of any Bonds pursuant to the Ordinance, except under the conditions and in the manner herein provided.

No such parity additional bonds shall be issued unless the Net Revenues derived from the Parking System during any twelve (12) consecutive months during the period of eighteen (18) months immediately prior to the issuance of the additional bonds then proposed to be issued, as set forth in a certificate of an Independent Accountant, appointed by the City, filed with the City Clerk, shall be not less than one hundred fifteen per centum (115%) of the largest amount of principal and interest which will mature and become due in any succeeding year on the Bonds issued pursuant to the Ordinance then Outstanding and on any parity additional bonds theretofore issued and then Outstanding, and on any other obligations then Outstanding which are payable from the Net Revenues of the Parking System, or any part thereof, and on the parity additional bonds then proposed to be issued; provided, however, that if the parity additional bonds are refunding bonds to achieve a debt service savings, then such test shall not apply.

Such parity additional bonds shall be issued only for the financing of the construction and acquisition of additions, extensions and improvements to the Parking System, and all revenues derived therefrom shall be deposited in the Revenue Fund created by the Ordinance or for refunding all or any part of any Bonds Outstanding hereunder.

The term "parity additional bonds" as used in this subsection, shall be deemed to mean additional bonds issued under the provisions and within the limitations of this subsection, payable from the Net Revenues of the Parking System on parity with Bonds originally authorized

and issued pursuant to the Ordinance. Such parity additional bonds shall be deemed to have been issued pursuant to the Ordinance, and all of the covenants, agreements and other provisions of the Ordinance (except as to details of such parity additional bonds inconsistent therewith) shall be for the equal benefit, protection and security of the Registered Owners of any Bonds originally authorized and issued pursuant to the Ordinance and the holders of any parity additional bonds subsequently created within the limits of and in compliance with this subsection. All of such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the Parking System and their source and security for payment from said revenues without preference of any Bond, over any other. The City shall comply fully with all the increased payments into the various funds created in the Ordinance required for such parity additional Bonds, in addition to the payments required for Bonds originally issued pursuant to the Ordinance.

The term "parity additional bonds", as used in the Ordinance shall not be deemed to include bonds, notes, certificates, or any other obligations subsequently issued, the lien of which on the Net Revenues of the Parking System, or any part thereof, is subject to the prior and superior lien on such revenues of the Bonds issued pursuant to the Ordinance, and the City shall not issue any obligations whatsoever payable from the Net Revenues of the Parking System, or for payment from such revenues with Bonds issued pursuant to the Ordinance, except in the manner and under the conditions provided in Section 5.09 thereof.

No parity additional bonds, as defined in the Ordinance, shall be issued at any time, however, unless all of the payments into the respective funds provided for in the Ordinance shall have been made in full to the date of issuance of such parity additional bonds, and the City shall have fully complied with all covenants, agreements and terms of the Ordinance.

## ADDITIONAL SECURITY FOR THE SERIES 2005 B BONDS

The Series 2005 B Bonds will be secured by the Bond Ordinance with a lien on the Net Revenues of the Parking System on parity with the Series 2005 A Bonds. In addition, the Act imposes a statutory mortgage lien on the Parking System.

NEITHER THE FULL FAITH AND CREDIT, NOR THE TAXING POWER OF THE CITY, NOR ANY FUNDS OTHER THAN THE NET REVENUES OF THE PARKING SYSTEM AND THE RESPECTIVE RESERVE ACCOUNTS, ARE PLEDGED TO THE PAYMENT OF THE BONDS, AND THE BONDS DO NOT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION.

### Application of Revenues

The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the City in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner provided in the Ordinance. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(A) All revenues deposited in the Revenue Fund shall be used first to pay current Operating Expenses of the Parking System.

(B) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) commencing 6 months prior to the first interest payment date of the Series 2005 A Bonds, a sum equal to 1/6th of the amount of interest which will become due on the Series 2005 A Bonds on the next ensuing semiannual interest payment date for deposit in the Series 2005 A Bonds Sinking Fund; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2005 A Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2005 A Bonds deposited therein; and (ii) commencing 6 months prior to the first interest payment date of the Series 2005 B Bonds, a sum equal to 1/6th of the amount of interest which will become due on the Series 2005 B Bonds on the next ensuing semiannual interest payment date for deposit in the Series 2005 B Bonds Sinking Fund; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2005 B Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2005 B Bonds deposited therein.

(C) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission for deposit into the respective Sinking Fund (i) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 2005 A Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 2005 A Bonds on the next ensuing annual principal payment date or mandatory Redemption Date for deposit in the Series 2005 A Bonds Sinking Fund and in the Series 2005 A Bonds Redemption Account in the case of the Term Bonds which are to be redeemed; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing annual principal payment date or mandatory Redemption Date is less than or greater than 12 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date; and (ii) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 2005 B Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 2005 B Bonds on the next ensuing principal payment date or mandatory Redemption Date for deposit in the Series 2005 B Bonds Sinking Fund and in the Series 2005 B Bonds Redemption Account in the case of the Term Bonds which are to be redeemed; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing annual principal payment date or

mandatory Redemption Date is less than or greater than 12 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date.

(D) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) an amount to be deposited in the Series 2005 A Bonds Reserve Account which will be sufficient to remedy any decrease in value of the Series 2005 A Bonds Reserve Account below the Series 2005 A Bonds Reserve Requirement or any withdrawal from the Series 2005 A Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2005 A Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2005 A Bonds Reserve Account is less than the Series 2005 A Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2005 A Bonds Reserve Account for deposit into the Series 2005 A Bonds Sinking Fund; and (ii) an amount to be deposited in the Series 2005 B Bonds Reserve Account which will be sufficient to remedy any decrease in value of the Series 2005 B Bonds Reserve Account below the Series 2005 B Bonds Reserve Requirement or any withdrawal from the Series 2005 B Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2005 B Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2005 B Bonds Reserve Account is less than the Series 2005 B Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2005 B Bonds Reserve Account for deposit into the Series 2005 B Bonds Sinking Fund. To the extent Net Revenues and any other legally available funds are available therefor, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2005 A Bonds Reserve Account or the Series 2005 B Bonds Reserve Account to an amount equal to the respective Reserve Requirement; provided, that no payments shall be required to be made into the such Reserve Accounts whenever and as long as the amounts deposited therein shall be equal to the respective Reserve Requirement.

(E) The City shall next, each month after all payments required above have been made, transfer the balance remaining in the Revenue Fund to the Repair, Maintenance and Operation Fund. All funds in the Repair, Maintenance and Operation Fund shall be kept apart from all other funds of the City or of the Depository Bank and shall be invested and reinvested in as provided in the Ordinance. Withdrawals and disbursements may be made from the Repair, Maintenance and Operation Fund as provided in Section 3.04 of the Ordinance.

(F) Moneys in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall be come due. Moneys in the Series 2005 A Bonds Reserve Account and the Series 2005 B Bonds Reserve Account shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall come due, when other moneys in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund are insufficient therefor, and for no other purpose, except for permitted transfers to

the respective Rebate Fund.

**Rate Covenant**

The City will fix, establish and maintain such rates and collect such fees, rentals or other charges for the services and facilities of the Parking System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year at least sufficient to pay, one hundred fifteen per centum (115%) of the largest amount of principal and interest maturing and becoming due on the Bonds then Outstanding in any succeeding fiscal year, in addition to paying, as the same shall become due, the necessary expense of repair (including replacement), maintenance and operation of the Parking System in each fiscal year, and all obligations or indebtedness other than the Bonds payable out of revenues of the Parking System in such fiscal year, and that such rates, fees, rentals or other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

## THE PARKING SYSTEM

The Parking System consists of 6 parking garages that contain 3,474 parking spaces. Of the spaces available in the garages, 1,827 are rented to the general public on a monthly basis. The City Parking System also has 1,050 metered parking spaces in its garages and on the streets. The Parking System also includes 7 parking lots, leased from the State of West Virginia, that contain 730 parking spaces. The lots are used for special events parking. The Parking System will acquire two (2) additional parking lots, containing a total of two hundred twenty-eight (228) parking spaces, in the vicinity of a new baseball stadium currently under construction.

The monthly parking charge ranges from $60.00 - $70.00, with some reduced rates available at certain garages for certain users. The charges for on-street metered parking spaces vary based upon length of term and location of parking space. The fines for overtime parking and other parking violations are as follows: For overtime parking, the fine is $5.00 if paid within 24 hours and $25.00 if paid thereafter; for parking illegally in a handicapped zone, the fine is $75.00; and for all other non-moving violations, the amount of any fine varies.

Under the Act, the responsibility for the operation and maintenance of the Parking System is given to the City, and the City is empowered to delegate such responsibility to a board. Pursuant to such authority, the City Council appointed a special committee designated the Parking Facilities Committee, being composed of the Mayor, City Manager and the Finance Committee of City Council. The Parking Facilities Committee promulgates rules and regulations governing the usage of all the parking facilities. The Parking System staff has the responsibility of collecting, receiving and depositing funds received from the operation of the Parking System.

Mr. Gary Taylor, the Parking Director, oversees the daily operations of the Parking System. He oversees the rental of spaces, collects monthly rentals and answers parking complaints. He has served in this position since July 2004.

In addition to parking lots and metered spaces of the Parking System, there are other

parking facilities built and operated in conjunction with the Town Center Mall, banks and/or office buildings, the Kanawha County Commission and hotels. These facilities, although primarily for their respective tenants and customers, provide some public parking spaces. There are also privately operated surface lots which may be utilized by the general public. The City believes that it provides parking facilities and services at prices competitive with those of other providers of parking facilities.

## FINANCIAL OPERATIONS

The accounts of the Parking System are maintained as a part of the general accounts of the City and are maintained in accordance with generally accepted accounting principals. The Office of the State Auditor of the State of West Virginia, Charleston, West Virginia, has audited the financial statements of the City for the year ended June 30, 2003. See APPENDIX C - Audited Financial Statements of City of Charleston. THE FINANCIAL STATEMENTS CONTAINED IN APPENDIX C ARE THE "AUDIT REPORT OF CITY OF CHARLESTON, WEST VIRGINIA FOR THE FISCAL YEAR ENDED JUNE 30, 2003".

### Operating Results

The following table is a summary of the operations of the Parking System for the fiscal year ended June 30, 2003. This summary has been complied from the respective audited financial statements and internal financial records for fiscal year ended June 30, 2003 but does not purport to present such data in accordance with generally accepted accounting principles.

Parking System Operating Results Fiscal Year Ended June 30

| | Audited 2002 | Audited 2003 | Unaudited 2004 | Projections 2005 | |
|---|---|---|---|---|---|
| Operating Revenues | | | | | |
| Parking Revenues | 3,105,327 | 2,727,030 | 2,291,087 | 2,306,100 | |
| Other | 4,869 | 16,472 | 1,288,908 | 1,297,000 | |
| Total Operating Revenues | 3,110,196 | 2,743,502 | 3,579,995 | 3,603,100 | |
| | | | | | |
| | | | | | |
| Operating Expenses | | | | | |
| Personnel Costs | 1,444,653 | 1,009,614 | 1,025,735 | 1,060,291 | |
| Contractual Servicces | 0 | 459,972 | 527,404 | 532,950 | |
| Commodities | 0 | 54,559 | 56,917 | 55,000 | |
| Depreciation | 995,489 | 973,114 | 896,134 | 874,000 | |
| Total Operating Expenses | 2,440,142 | 2,497,259 | 2,506,190 | 2,522,241 | |
| | | | | | |
| Non Operating Revenues (Expenses) | | | | | |
| Interest | 122,651 | 22,463 | 14,331 | 18,000 | |
| Interest on MBC Deposits | 0 | 81,771 | 24,569 | 64,000 | |
| Gain on Sale of Fixed Assets | 0 | (2,947) | 125 | 0 | |
| Other Interest | 0 | 3,192 | (1,463) | (3,000) | |
| Interest on Bonds | (1,098,529) | (995,101) | (914,727) | (880,036) | |
| Bond Debt Service Charge | 0 | (105,301) | (99,829) | (100,000) | |
| Bad Debt | 0 | 285 | (60) | (600) | |
| Contingency | 0 | 0 | 0 | (50,158) | |
| Total Non Operating Revenues (Expenses) | (975,878) | (995,638) | (977,054) | (951,794) | |
| | | | | | |
| Net Income | (305,824) | (749,395) | 96,751 | 129,065 | |
| | | | | | |
| Plus: | | | | | |
| Depreciation | 995,489 | 973,114 | 896,134 | 874,000 | |
| Interest on Bonds | 1,098,529 | 995,101 | 914,727 | 880,036 | |
| Bond Debt Service Charge | 0 | 105,301 | 99,829 | 100,000 | |
| | | | | | |
| | | | | | |
| Revenues Available for Debt Service | 1,788,194 | 1,324,121 | 2,007,441 | 1,983,101 | |
| | | | | | |
| Debt Service on Bonds | 1,589,486 | 1,583,628 | 1,585,265 | 1,357,114 | * |
| | | | | | |
| Coverage | 1.13 | 0.84 | 1.27 | 1.46 | |
| | | | | | |
| | | | | | |
| * Proposed new debt service. | | | | | |

*Source: City of Charleston Audits and Internal Financial Records*

THE PROJECTIONS INCLUDED UNDER OPERATING RESULTS HAVE BEEN PREPARED BY THE CITY OF CHARLESTON AND SHOULD NOT BE RELIED UPON OR CONSTRUED AS STATEMENTS OF FACT. SOME ASSUMPTIONS INEVITABLY WILL NOT MATERIALIZE AND UNANTICIPATED EVENTS AND CIRCUMSTANCES MAY

OCCUR; THEREFORE, THE ACTUAL RESULTS ACHIEVED DURING THE PERIODS FOR WHICH THE PROJECTIONS HAVE BEEN PROVIDED WILL VARY FROM THE PROJECTIONS, AND SUCH VARIATIONS MAY OR MAY NOT BE MATERIAL.

**Parking System Budget and Expenditures**

An operating budget is prepared annually by the City's Treasurer and is approved by the City's Parking Committee prior to the beginning of each new fiscal year. The operating budget is then compared to actual year-to-date revenues and expenditures on a monthly basis. The actual operating results for the Parking System through June 30, 2003, are set forth on page C-_ of Appendix C.

## BANKRUPTCY

The United States Bankruptcy Code permits political subdivisions that are insolvent or unable to meet their debts to file a petition for relief in federal bankruptcy courts if authorized by state law. Bankruptcy proceedings by the City could have additional adverse effects on Bondholders, including (a) delay in the enforcement of Bondholders' remedies, (b) subordination of the Bondholders' liens to claims of those supplying goods and services to the City after the initiation of bankruptcy proceedings and to the administrative expenses of bankruptcy proceedings and (c) imposition without the consent of all Bondholders of a reorganization plan reducing or delaying payment of the Bonds. The Bankruptcy Code contains provisions intended to insure that, in any reorganization plan not accepted by the holders of at least a majority in aggregate principal amount of the Bonds, Bondholders will have the benefit of their original lien or the "indubitable equivalent." The effect of these and other new provisions of the Bankruptcy Code cannot be predicted with any certainty and may be significantly affected by judicial interpretation.

## LITIGATION

There are no actions, suits, proceedings, inquiries or investigations at law or in equity before or by any court, public board or body, now pending or, to the best knowledge of the City, threatened or affecting the City (or, to the City's knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the validity of the Bonds, the Bond Ordinance, the Supplemental Resolution or any agreements to which the City is a party and which are a result of the issuance of the Bonds.

## NEGOTIABLE INSTRUMENTS

Pursuant to state law, the Bonds are and have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia.

## FINANCIAL STATEMENTS

Included in APPENDIX C are the audited financial statements of the City as of and for the year ended June 30, 2003, and the report with respect to the audited financial statements as of June

30, 2003, dated February 5, 2004, of the Office of the State Auditor of the State of West Virginia.

## TAX EXEMPTION

### Opinion of Bond Counsel

Bond Counsel is of the opinion that under existing statutes and court decisions of the United States of America, as currently written and applied, the interest on the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, will be excludable from the gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). In addition, such interest will not be treated as a preference item in calculating the alternative minimum tax that may be imposed with respect to individuals and corporations. Under the Code, however, interest on the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, is included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax that may be imposed with respect to corporations. Bond Counsel is of the further opinion that, under the Act, the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, and the interest thereon are exempt from direct taxation by the State of West Virginia and by any county, municipality, political subdivision or agency thereof. In its approving opinions, Bond Counsel expresses no opinion regarding other tax consequences arising with respect to the bonds.

The Code establishes certain requirements that must be met subsequent to the issuance and delivery of the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, in order that interest on the Bonds be and remain excludable from gross income under Section 103 of the Code. These requirements include, but are not limited to, requirements relating to the use, investment and expenditure of bond proceeds and the requirements that certain earnings be rebated to the federal government. The City has covenanted to comply with certain provisions and procedures, pursuant to which such requirements can be satisfied. Noncompliance with such requirements may cause interest on the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, to become includable in gross income for federal income tax purposes retroactive to the date of issuance thereof, irrespective of the date on which such noncompliance is ascertained.

## UNDERWRITING

Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (collectively, the "Underwriters") have agreed, subject to certain conditions, to purchase the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, from the City at an aggregate discount from the initial public offering prices set forth on the cover page of this Official Statement. The obligation of the Underwriters to purchase the Bonds is subject to certain terms and conditions set forth in the purchase contract entered into between the Underwriters and the City. The Bonds may be offered and sold to certain dealers, banks and others at prices lower than the initial offering prices, and such initial public offering prices may be changed, from time to time, by the Underwriters.

## VERIFICATION OF MATHEMATICAL COMPUTATIONS

Smith, Cochran & Hicks, P.L.L.C., independent certified public accountants, will (a) verify the mathematical accuracy of the arithmetical computation of the cash flow provided by the Escrow Fund; (b) verify that the projected income and principal of the securities and any cash deposited into the Escrow Fund is adequate to pay on debt service on the 1993 Bonds until February 11, 2005, and, on April 1, 2005, the redemption price of the Notes. Such verifications will be based upon information supplied to Smith, Cochran & Hicks, P.L.L.C. by the Underwriters.

## LEGAL MATTERS

Legal matters incident to the authorization and issuance of the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, by the City are subject to the approval of Jackson Kelly PLLC, Charleston, West Virginia, Bond Counsel. The proposed form of Bond Counsel's opinion is appended hereto as APPENDIX D.

Certain legal matters will be passed upon for the City by Steptoe & Johnson, PLLC, Charleston, West Virginia, and for the Underwriters by Goodwin & Goodwin, LLP, Charleston, West Virginia.

## CONTINUING DISCLOSURE

The City has agreed to an undertaking for the benefit of the Registered Owners of the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, to provide certain financial and operating information (the "Annual Information") not later than one hundred eighty (180) days following the end of the fiscal year of the City (currently June 30), commencing in 2005, and to provide the Annual Information to the Central Post Office, as defined in the Continuing Disclosure Certificate delivered by the City at closing, for delivery to each National Recognized Municipal Securities Information Repository ("National Repository") and any State Information Depository ("State Depository") and to provide notice of the occurrence of the enumerated events to the Central Post Office for delivery to each National Repository or the Municipal Securities Rulemaking Board ("MSRB") and to any State Depository. This obligation shall be evidenced by the Continuing Disclosure Certificate from the City, the form of which is attached hereto as Appendix E.

The Annual Information will consist generally of information of the type contained herein in Appendix C of the Official Statement. Any of the foregoing information may be supplied by including by specific reference information previously supplied to the Central Post Office for delivery to each National Repository and any State Depository or the Securities and Exchange Commission ("SEC"). Information will not be included by reference from any final official statement unless such final official statement is available from the MSRB.

This continuing disclosure obligation is being undertaken by the City to assist the Underwriter in complying with Rule 15c-12 promulgated by the SEC. The City has agreed to give notice in a timely manner to the Central Post Office for delivery to each National Repository, or the

MSRB, and to each State Depository of any failure to supply the requested information. However, any such failure will not constitute a default under the terms of the Bonds. Registered Owners may contact the City Manager of the City at P.O. Box 2749, Charleston, WV 25330 (304) 348-8014 for more information.

For the fiscal years ended June 30, 2001, 2002 and 2003, the City failed to provide the Annual Information to each National Repository. The problem occurred primarily because the disclosure responsibility was not specifically assigned to any individual or department after the City's 2001 bond issue. The problem was corrected on or about December 1, 2004, when the Annual Information was provided to each National Repository and to the Central Post Office. The City has taken steps to avoid a recurrence of the problem by assigning the task to the City Auditor's office.

## MISCELLANEOUS

So far as any statements made in this Official Statement involve matters of opinion or estimates, whether or not expressly stated, they are set forth as such and not as representations of fact, and no representation is made that any of such statements will be realized. Neither this Official Statement nor any statement which may have been made orally or in writing is to be construed as a contract with the Owners of the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds,.

Copies of the Ordinance, the Supplemental Resolution and other applicable documents may be obtained from the City at the following address or telephone number:

The City of Charleston
P.O. Box 2749
Charleston, WV 25330
Attention: City Manager
(304) 348-8014

or, during the period of offering the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, from the Underwriter. Ongoing financial information concerning the City and the Parking System may be obtained from the above-referenced source.

The execution and distribution of this Official Statement has been duly authorized by The City of Charleston.

THE CITY OF CHARLESTON, WEST VIRGINIA

By _____
Mayor

# APPENDIX A

## The City of Charleston

# APPENDIX B

## Summary of Certain Provisions of the Bond Ordinance

# APPENDIX C

## Audited Financial Statements City of Charleston

# APPENDIX D

## Form of Approving Bond Counsel Opinion

# EXHIBIT D

Form of

Purchase Agreement

# APPENDIX E

## Form of Continuing Disclosure Certificate

THE CITY OF CHARLESTON WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

TAX AND NON-ARBITRAGE CERTIFICATE

The undersigned Mayor of The City of Charleston (the "Issuer"), being an official of the Issuer duly charged with the responsibility for the issuance of the Parking System Refunding Revenue Bonds, Series 2005 B, dated April 1, 2005 (the "Series 2005 B Bonds"), hereby certify as follows, all capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance enacted on February 7, 2005, as supplemented by the Supplemental Resolution adopted on February 7, 2005 (collectively, the "Ordinance"), pursuant to which the Series 2005 B Bonds are issued:

A. DEFINITIONS

The following words and phrases shall have the following meanings or such meanings required under the Code or the Regulations. Any capitalized word or term used herein but not defined herein shall have the same meaning set forth in the Ordinance.

**"Bona Fide Debt Service Fund"** means a fund, which may include proceeds of an issue, that:

(a) Is used primarily to achieve a proper matching of revenues with principal and interest payments within each Bond Year; and

(b) Is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of:

(i) the earnings on the fund for the immediately preceding Bond Year; or

(ii) one-twelfth of the principal and interest payments on the Series 2005 B Bonds for the immediately preceding Bond Year.

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

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

**"Computation Date"** means each date on which the Rebate Amount for the Series 2005 B Bonds is computed under Section 1.148-3(e) of the Regulations.

**"Computation Date Credit"** means $1,000 for each Bond Year during which there are Gross Proceeds subject to rebate, or such other amount as may then be permitted by the Regulations.

**"Computation Period"** means the period between computation dates. The first computation period begins on the issue date and ends on the first computation date. Each succeeding computation period begins on the date immediately following the computation date and ends on the next computation date.

**"Cost of Issuance"** means costs to the extent incurred in connection with, and allocable to, the issuance of the Series 2005 B Bonds within the meaning of Section 147(g) of the Code. For example, issuance costs include the following costs but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters' spread; counsel fees; financial advisory fees; rating agency fees; trustee fees; paying agent fees; bond registrar, certification, and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than for qualified guarantees (as defined in Section 1.148-4(f) of the Regulations); and similar costs.

**"Date of Issue"** means, with respect to the Series 2005 B Bonds, April 1, 2005.

**"Discharged"** means, with respect to any Series 2005 B Bond, the date on which all amounts due with respect to such Series 2005 B Bond are actually and unconditionally due if cash is available at the place of payment for such Series 2005 B Bond and no interest accrues with respect to such Series 2005 B Bond after such date.

**"Fair Market Value"** means fair market value as defined in Section 1.148-5(d)(6) of the Regulations.

**"Final Computation Date"** means the date on which the last Series 2005 B Bond is Discharged.

**"Future Value"** means the future value of a payment or receipt at the end of any period, determined using the economic accrual method and equals the value of that payment or receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the yield on the issue, using the same compounding interval and financial conventions used to compute that yield as provided under Section 1.148-3(c) of the Regulations.

**"Gross Proceeds"** means any Proceeds and Replacement Proceeds of the Series 2005 B Bonds, all as defined in the Regulations.

**"Investment"** means any investment property as defined in Sections 148(b)(2) and 148(b)(3) of the Code and any other tax-exempt bond.

**"Investment Proceeds"** means any amounts actually or constructively received from investing proceeds of the Series 2005 B Bonds.

**"Investment Property"** means:

(A) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code),

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

Except as provided in the following sentence, the term "Investment Property" does not include any tax-exempt bond. With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in Section 57(a)(5)(C) of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

**"IRS"** means the Internal Revenue Service.

**"Issue Price"** means, with respect to the Series 2005 B Bonds, $2,655,000.00 (par amount).

**"Net Sales Proceeds"** means Sale Proceeds, less the portion of those Sale Proceeds invested in a reasonably required reserve or replacement fund under Section 148(d) of the Code and as part of a minor portion under Section 148(e) of the Code.

**"Nonpurpose Investment"** means any Investment Property, as defined in Section 148(b) of the Code, that is not a Purpose Investment.

**"Payment"** means a payment as defined in Section 1.148-3(d) of the Regulations for purposes of computing the Rebate Amount, and a payment as defined in Section 1.148-5(b) of the Regulations for purposes of computing the Yield on an Investment.

**"Proceeds"** means any Sale Proceeds, Investment Proceeds, and Transferred Proceeds of the Series 2005 B Bonds. Proceeds do not include, however, amounts actually or constructively received with respect to a Purpose Investment that are properly allocable to the immaterially higher yield under Section 1.148-2(d) of the Regulations or Section 143(g) of the Code or to qualified administrative costs recoverable under Section 1.148-5(e) of the Regulations.

**"Purpose Investment"** means an Investment that is acquired to carry out the governmental purpose for which the Series 2005 B Bonds were issued.

**"Rebate Amount"** means 100% of the amount owed to the United States under Section 148(f)(2) of the Code, as further described in Section 1.148-3 of the Regulations.

**"Rebate Analyst"** means the entity or person chosen by the Issuer in accordance with Section E(6) hereof to determine the Rebate Amount.

**"Rebate Payment Date"** means the date following a Computation Date on which the Rebate Amount is mailed or otherwise filed with the IRS. The Rebate Payment Date cannot be a date which is more than 60 days after a Computation Date.

**"Receipt"** means a receipt as defined in Section 1.148-3(d) of the Regulations for purposes of computing the Rebate Amount, and a receipt as defined in Section 1.148-5(b) for purposes of computing Yield on an Investment.

**"Regulation"** or **"Regulations"** means the temporary, proposed or final Income Tax Regulations promulgated by the Department of the Treasury that are applicable to the Series 2005 B Bonds.

**"Replacement Proceeds"** means replacement proceeds as defined in Section 1.148-1(c) of the Regulations.

**"Sale Proceeds"** means any amounts actually or constructively received from the sale of the Series 2005 B Bonds, including amounts used to pay underwriters' discount or compensation and accrued interest other than pre-issuance accrued interest. Sale proceeds also include but are not limited to, amounts derived from the sale of a right that is associated with a bond, and that is described in Section 1.148-4(b)(4) of the Regulations.

**"Series 1993 Bonds"** means the Issuer's Parking System Refunding Revenue Bonds, Series 1993, previously currently refunded by the Series 2005 Notes.

**"Series 2005 B Bonds"** means the Issuer's Parking System Refunding Revenue Bonds, Series 2005 B, dated April 1, 2005.

**"Series 2005 Notes"** means the Issuer's Parking System Bond Anticipation Notes, Series 2005, dated February 1, 2005.

**"Tax-Exempt Bond"** means any bond the interest on which is excludable from gross income under Section 103(a) of the Code. For purposes of Section 148 of the Code, tax-exempt bond includes:

(1) An interest in a regulated investment company to the extent that at least 95% of the income to the holder of the interest is interest that is excludable from gross income under Section 103 of the Code; and

(2) A certificate of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in 31 CFR part 344.

**"Transferred Proceeds"** means transferred proceeds as defined in Section 1.148-9 of the Regulations.

**"Underwriter"** means, collectively, Crews & Associates, Inc., Charleston, West Virginia and Ferris, Baker Watts, Incorporated, Charleston, West Virginia.

**"Value"** means value determined under Section 1.148-4(e) of the Regulations for the Series 2005 B Bonds, and value determined under Section 1.148-5(d) for an Investment.

**"Yield"** or **"yield"** means the yield computed under Section 1.148-4 of the Regulations for the Series 2005 B Bonds, and the yield computed under Section 1.148-5 of the Regulations for an Investment.

**"Yield Restricted"** means required to be invested at a Yield that is not materially higher than the Yield on the Series 2005 B Bonds under Section 148(a) of the Code and Section 1.148-2 of the Regulations.

B. GENERAL

1. This certificate is being executed and delivered pursuant to Section 148 of the Code. The undersigned officer of the Issuer is charged with the responsibility of issuing the Series 2005 B Bonds, is familiar with the facts, circumstances, and estimates herein certified and is duly authorized to execute and deliver this certificate on behalf of the Issuer.

2. This certificate may be relied upon as the certificate of the Issuer.

3. The Issuer has not been notified by the IRS of any listing or proposed listing of it as an issuer that may not certify its bonds, notes 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 IRS 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 April 1, 2005, the date on which the Series 2005 B Bonds are to be physically delivered in exchange for the Series 2005 Notes, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable. The

Issuer has previously received, and hereby acknowledges receipt of, the sum of $2,584,387.50 (constituting the total of net proceeds plus accrued interest in the amount of $2,212.50), from the sale of the Series 2005 Notes.

5. The Issuer has covenanted in the Ordinance that (i) it will restrict the use of the proceeds of the Series 2005 B Bonds in such manner and to such extent as may be necessary, so that the Series 2005 B Bonds will not constitute "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 2005 B Bonds) so that the interest on the Series 2005 B Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

6. The Series 2005 Notes were issued and delivered for the purposes of providing moneys, together with the moneys transferred from the Series 1993 Bonds sinking fund and reserve account, necessary (i) to currently refund the Series 1993 Bonds; (ii) to fund a reserve fund for the Series 2005 Notes; and (iii) to pay costs of issuance of the Series 2005 Notes and related costs.

7. The Series 1993 Bonds were issued for the purpose of providing funds to finance or refinance the costs of acquisition and construction of certain additions, betterments and improvements to the existing parking system of the Issuer.

8. The face amount of the Series 2005 B Bonds is $2,655,000.00. The sources and uses of the proceeds of the Series 2005 B Bonds and the moneys transferred from the Series 2005 Notes Reserve Accounts in connection with the refunding of the Series 2005 Notes are as follows:

**Sources**

| | |
|---|---|
| Principal Amount of the Series 2005 B Bonds | $ 2,655,000.00 |
| Transfer from the Series 2005 Notes Reserve Account | $ 265,500.00 |
| Total Sources | $ 2,920,500.00 |

**Uses**

| | |
|---|---|
| Series 2005 Notes Repayment Account | $ 2,655,000.00 |
| Series 2005 B Bonds Reserve Account | $ 265,500.00 |
| Total Uses | $ 2,920,500.00 |

9. The Series 2005 B Bonds Reserve Account is being funded with moneys on deposit in the Series 2005 Notes Reserve Account, in the amount of $265,500.00.

10. The Underwriter has stated, in its certificate, a copy of which is attached hereto as EXHIBIT A - CERTIFICATE OF UNDERWRITER (the "Underwriter's Certificate") that the Series 2005 B Bonds have been reoffered, and a substantial amount thereof sold, to purchasers other than bond houses, brokers or other intermediaries, at the initial offering prices not greater than the respective prices shown on the cover page of the Official Statement of the Series 2005 B Bonds, including interest accrued on the Series 2005 B Bonds. The computation of the yield on the Series 2005 B Bonds has been determined by the Underwriter, using the present value method in accordance with Section 1.148-5 of the Regulations and using a 360-day year, compounding interest semiannually. The Yield on the Series 2005 B Bonds, as so computed, has been determined to be 4.1918038%, based on a "purchase price" equal to the Issue Price for the Series 2005 B Bonds (including accrued interest thereof).

C. THE REFUNDING

The Series 2005 B Bonds are being delivered simultaneously with the delivery of this certificate and are issued in exchange for the Series 2005 Notes, in an amount equal to the then outstanding principal amount of, and or corresponding maturities to, the Series 2005 Notes. The face amount of the Series 2005 B Bonds is $2,655,000.00.

D. The Series 2005 B Bonds

1. Using the initial offering price of the Series 2005 B Bonds as the "purchase price" and taking into account accrued interest as described below, the yield on the Series 2005 B Bonds is computed to be 4.1918038% (the "Bond Yield").

2. The Series 2005 B Bonds Sinking Fund (the "Sinking Fund") has been created under the Ordinance. Moneys deposited to the Sinking Fun (other than the Reserve Account), including subsequent deposits thereto, will be spent within a 13-month period beginning on the date of deposit and will be depleted at least once a year, except for a reasonable carryover amount not in excess of 1/12 of the annual debt service with respect to the Series 2005 B Bonds. The Sinking Fund is designed to achieve a proper matching of the Issuer's revenues and debt service on the Series 2005 B Bonds within each Bond Year. All moneys held in the Sinking Fund will be used to pay debt service on the Series 2005 B Bonds. The Sinking Fund qualifies as a Bona Fide Debt Service Fund and all moneys in the Sinking Fund will be invested without restriction as to yield and are not subject to rebate.

3. The Series 2005 B Bonds Reserve Account (the "Reserve Account") has been created under the Ordinance in an amount equal to the Reserve Requirement of the Series 2005 B Bonds (the "Reserve Requirement"). The Reserve Account is being funded with moneys on deposit in the Series 2005 Notes Reserve Account, in the amount of $265,500.00. The Reserve Requirement for the Series 2005 B Bonds is equal to the lesser of (i) 10% of the original stated principal amount of the Series 2005 B Bonds; (ii) the maximum amount of principal and interest which will come due on the Series 2005 B Bonds in any year; or (iii) 125% of the average amount of principal and interest which will come due on the Series 2005 B Bonds. The moneys in the Reserve Account will be invested without restriction as to yield.

All earnings on amounts deposited in the Reserve Account will, to the extent the yield thereon exceeds the yield on the Series 2005 B Bonds, be subject to rebate.

4. No Costs of Issuance are being funded from proceeds of the Series 2005 B Bonds.

5. Other than the funds and accounts described above, there are no other funds or accounts of the Issuer which (i) are reasonably expected to be used to pay debt service on the Series 2005 B Bonds or which are pledged as collateral to secure repayment of debt service on the Series 2005 B Bonds and (ii) for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Series 2005 B Bonds.

6. There is no accrued interest with respect to the Series 2005 B Bonds. Accrued interest with respect to the Series 2005 Notes, in the amount of $2,212.50, was applied to the payment of interest on the Series 2005 Notes on April 1, 2005, being the date on which the Series 2005 B Bonds were physically delivered in exchange for the Series 2005 Notes.

E. REBATE

1. Arbitrage Compliance. The Issuer acknowledges that the continued exclusion of interest on the Series 2005 B Bonds from gross income of the recipients thereof for purposes of federal income taxation depends, in part, upon compliance with the arbitrage limitations imposed by Section 148 of the Code, including the rebate requirements described below. The Issuer hereby agrees and covenants that it shall not permit at any time or times any of the Gross Proceeds of the Series 2005 B Bonds nor other funds of the Issuer to be used, directly or indirectly, to acquire any asset or obligation, the acquisition of which would cause the Series 2005 B Bonds to be "arbitrage bonds" for purposes of Section 148 of the Code. The Issuer further agrees and covenants that it shall do and perform all acts and things necessary in order to ensure that the requirements of Section 148 of the Code are met. To that end, the Issuer will take all actions described below with respect to the investment of Gross Proceeds of the Series 2005 B Bonds. The procedures set forth below are subject to revision if necessary to comply with any additional rebate requirements of the Code or the Regulations. The Issuer hereby agrees and covenants to take all actions necessary to comply with these requirements.

2. Rebate Fund. Section 148(f) of the Code requires that certain earnings on Nonpurpose Investments allocable to the Gross Proceeds of the Series 2005 B Bonds be paid to the United States to prevent the Series 2005 B Bonds from being arbitrage bonds. The arbitrage that must be rebated is based on the difference between the amount actually earned on Nonpurpose Investments and the amount that would have been earned if those investments had a Yield equal to the Yield on the Series 2005 B Bonds.

3. Calculation of Rebate Amount. For each Computation Date, the Rebate Analyst shall calculate the Rebate Amount by the appropriate method described in the Code and Regulations applicable or which may become applicable to the Series 2005 B Bonds.

4. Payment to United States. (a) The first rebate installment payment must be made for a Computation Date that is not later than 5 years after the Date of Issue and subsequent rebate installment payments must be made for a Computation Date that is not later than 5 years after the previous Computation Date for which an installment payment was made, as required under Section 1.148-3(f)(l) of the Regulations.

(b) A rebate installment payment must be in an amount that, when added to the Future Value, as of the Computation Date, of previous rebate payments made for the issue, equals at least 90% of the Rebate Amount as of that date, as required under Section 1.148-3(f)(1) of the Regulations.

(c) For the Final Computation Date, a final rebate payment must be paid in an amount that, when added to the Future Value of previous rebate payments made for the issue, equals 100% of the Rebate Amount as of that date, as required under Section 1.148-3(f)(2) of the Regulations.

(d) Each rebate payment must be paid no later than 60 days after the Computation Date to which the payment relates, as required under Section 1.148-3(g) of the Regulations.

(e) Each rebate payment shall be mailed to the then applicable Internal Revenue Service Center. Each rebate payment shall be accompanied by a properly completed IRS Form 8038-T or other form provided by the IRS for this purpose.

5. Recordkeeping. In connection with the rebate requirement, the Issuer shall maintain (or cause to be maintained) the following records:

(a) The Issuer shall record all Rebate Amounts paid to the United States.

(b) The Issuer shall retain records of the rebate calculations until six years after the Final Computation Date.

(c) The Issuer shall keep and record the data pertaining to the investment of the proceeds of the Series 2005 B Bonds until six years after the Final Computation Date.

6. Rebate Analyst. (a) The Issuer shall appoint a Rebate Analyst to perform the rebate calculations as required herein.

(b) The Issuer may rely conclusively upon the opinions, calculations, determinations, directions and advice of the Rebate Analyst. The charges and fees for such

Rebate Analyst shall be paid by the Issuer upon presentation of an invoice for services rendered in connection therewith. The Issuer hereby agrees to pay the fees of the Rebate Analyst.

7. Failure to Pay Rebate Amounts. In the event the Issuer fails to pay at the proper time and in the proper amount the Rebate Amount, it will pay the Rebate Amount plus interest within 180 days after discovery of such failure as set forth in Section 1.148-3(h)(3) of the Regulations. Notwithstanding the foregoing, in the event the Issuer fails to pay at the proper time and in the proper amount any Rebate Amount, it hereby covenants and agrees to pay any penalty required by IRS in lieu of a declaration of taxability on the Series 2005 B Bonds.

F. EXCESS MONEYS.

All excess moneys, if any, held in the Series 2005 Notes sinking fund and reserve account held at the West Virginia Municipal Bond Commission will be transferred to the Issuer, and said funds will be applied to the payment of capital expenses related to the Issuer's parking system. Such money shall be expended within six months of the date hereof and pending expenditure shall be invested at a yield not to exceed the yield as the Series 2005 B Bonds.

G. MISCELLANEOUS

1. The Issuer shall file Form 8038-G in a timely fashion with the applicable Internal Revenue Service Center.

2. None of the proceeds of the Series 2005 B Bonds will be used (directly or indirectly) in any trade or business carried on by, or will be used to make or finance loans to, any person who is not a governmental unit.

3. The original proceeds of the Series 2005 B Bonds will not exceed the amount necessary for the purpose of the issue, except to the extent any such proceeds are required for rebate to the United States.

4. The Issuer shall not permit at any time or times any of the proceeds of the Series 2005 B Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Series 2005 B Bonds from treatment afforded by Section 103(a) of the Code by reason of classification of the Series 2005 B 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 Treasury Regulations promulgated or to be promulgated thereunder.

5. The Series 2005 B 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.

6. The Issuer has not entered and will not enter into any transaction to reduce the Yield on an investment of the Gross Proceeds of the Series 2005 B Bonds so as to cause the amount to be rebated to the United States Treasury to be less than it would have been had the transaction been at arm's length and the Yield on the Series 2005 B Bonds not been relevant to either party to the transaction, and that all investments of Gross Proceeds will be made on an arm's length, Fair Market Value basis.

7. The Issuer shall comply with the general allocation and accounting rules set forth in Section 1.148-6 of the Regulations and the special arbitrage rules for refunding issues set forth in Section 1.148-9 of the Regulations.

8. No portion of the proceeds of the Series 2005 B Bonds will be used directly or indirectly to acquire securities or obligations which may reasonably be expected, on the date hereof, to produce a yield materially higher that the Yield on the Series 2005 B Bonds.

9. In connection with the Series 2005 B Bonds, there has not been created or established, and the Issuer does not expect that there will be created or established, any sinking fund, pledged fund or similar fund (other than as specifically identified in this certificate), including, without limitation, any arrangement under which money, securities, or obligations are pledged directly or indirectly to secure the Series 2005 B Bonds or any contract securing the Series 2005 B Bonds or any arrangements providing for compensation or minimum balances to be maintained by the Issuer or related governmental agencies with any registered owner of the Series 2005 B Bonds.

10. The Series 2005 B Bonds are not and will not be part of a transaction or series of transactions that (i) attempt to circumvent the provisions of Section 148 of the Code, or any successor thereto, and the Regulations promulgated thereunder which enable the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage or (ii) increase the burden on the market for tax-exempt obligations in any manner, including, without limitation, by selling obligations that would not otherwise be sold or selling a larger amount of obligations, or issuing them sooner, or allowing them to remain outstanding longer, that would otherwise be necessary.

11. No other obligations are being issued by the Issuer or any related entity at substantially the same time and sold pursuant to a common plan of financing and which will be paid out of substantially the same source of funds (or which will have substantially the same claim to be paid out of substantially the same source of funds) as the Series 2005 B Bonds or which will be paid directly or indirectly from proceeds of the sale of the Series 2005 B Bonds.

12. Gross Proceeds of the Series 2005 B Bonds, other than gross proceeds that are allocable to:

(a) the payment of administrative costs allocable to the Series 2005 B Bonds, or carrying and repaying the Series 2005

B Bonds, or the reasonable investments of proceeds of the Series 2005 B Bonds; and

(b) transferred proceeds allocable to expenditures for governmental purposes of the Series 2005 B Bonds;

will not exceed 1% of the Sale Proceeds from the Series 2005 B Bonds.

13. The issuance of the Series 2005 B Bonds will not involve the use of a "device" or an "abusive transaction" within the meaning of Section 149(d)(4) of the Code and the Regulations thereunder.

14. The Issuer covenants to comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Series 2005 B Bonds in order that the interest thereon be and continue to be excludable from gross income for federal income tax purposes.

15. The Issuer will rebate to the United States the amount, if any, required by the Code and to take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts from lawfully available sources, and obtain a waiver from the IRS, if necessary, and take all other actions required of it in order to maintain the exclusion of interest on the Series 2005 B Bonds from gross income for federal income tax purposes.

16. The Issuer has retained the right to amend the Ordinance authorizing the issuance of the Series 2005 B 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 Series 2005 B Bonds from the gross income of the owners thereof.

17. The Issuer shall comply with all yield restrictions on Bond proceeds as set forth in the Code.

18. 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 Series 2005 B Bonds and the interest thereon. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2005 B Bonds as may be necessary in order to 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.

19. The Series 2005 B Bonds are a fixed yield issue. No interest or other amount payable on any of the Series 2005 B 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.

20. Under Section 1.148-2(b) of the Regulations, an officer of the Issuer must certify the Issuer's expectations as of the issue date. In accordance therewith, the undersigned Mayor of the Issuer hereby in good faith certified that the representations and covenants set forth in this certificate constitute the reasonable expectations of the Issuer as of the Issue Date. Accordingly, the representations and covenants set forth herein are intended and may be relied upon as the certification described in Section 1.148-2(b) of the Regulations and are being delivered as part of the record of proceedings in connection with the issuance of the Series 2005 B Bonds.

23. 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.

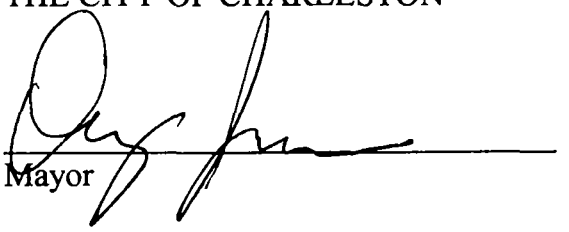
24. Jackson Kelly PLLC is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinion regarding the tax-exempt status of interest on the Series 2005 B Bonds.

25. Notwithstanding any other provision hereof, any provision of this certificate shall be amended at any time and such amendment shall be complied with, upon receipt by the Issuer of an opinion of Bond Counsel that such amendment is necessary or permissible under the then current Code and Regulations and is either necessary to or will not adversely affect the excludability of interest on the Series 2005 B Bonds from gross income of the recipients thereof for federal income tax purposes.

26. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS my signature this 1st day of April, 2005.

THE CITY OF CHARLESTON



Mayor

EXHIBIT A

CERTIFICATE OF UNDERWRITER

[See Tab No. 20]

THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

CROSS-RECEIPT

April 1, 2005

The City of Charleston
P.O. Box 2749
Charleston, West Virginia 25330

On the date hereof, the undersigned, on behalf of itself and Ferris, Baker Watts, Incorporated, acknowledges receipt from United Bank, Inc., as registrar, of $2,655,000 in aggregate principal amount of Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds"), issued by The City of Charleston, West Virginia (the "Issuer").

The Series 2005 B Bonds are dated as of April 1, 2005, and bear interest from said date, payable semiannually on June 1 and December 1 of each year until maturity or prior redemption, commencing June 1, 2005; are in the form of one bond for each stated maturity; are numbered from BR-1 consecutively upward in order of authentication; are registered in the name of Cede & Co., as nominee for The Depository Trust Company; and are as described in the Official Statement dated February 7, 2005.

CREWS & ASSOCIATES, INC., on behalf of itself and FERRIS, BAKER WATTS, INCORPORATED

By
Its Vice President

On the date hereof, the undersigned, for and on behalf of the Issuer, hereby acknowledges receipt of its Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes") in exchange for the Series 2005 B Bonds. The Issuer has previously received, and hereby acknowledges receipt of, the sum of $2,584,387.50 (constituting the total of net proceeds plus accrued interested in the amount of $2,212.50), from the sale of said Series 2005 Notes.

THE CITY OF CHARLESTON, WEST VIRGINIA

By
Its Mayor

NUMBER
BR-1

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**
**STATE OF WEST VIRGINIA**
**COUNTY OF KANAWHA**
**THE CITY OF CHARLESTON**

**PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B**

| | | | |
|---|---|---|---|
| Number: | BR-1 | | |
| Interest Rate: | 3.000% | Cusip: | 160591FJ7 |
| Maturity Date: | June 1, 2005 | Bond Date: | April 1, 2005 |
| Registered Owner: | Cede & Co. | | |
| Principal Amount: | $105,000<br>ONE HUNDRED FIVE THOUSAND DOLLARS | | |

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special fund provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above, and solely from such special fund

SPECIMEN

also to pay interest on said sum from the date of authentication hereof at the Interest Rate set forth above, semiannually, on the first day of June and the first day of December in each year, beginning June 1, 2005, both principal of and interest on this Bond being payable in any coin or currency which on the respective date of payment of principal and interest, is legal tender for the payment of public or private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (the "Paying Agent"). Interest on the Bonds shall be paid by check mailed to the Registered Owner thereof at the address that appears on the books of United Bank, Inc., as registrar (the "Registrar"), at the close of business on the 15th day of the month preceding an Interest Payment Date (the "Record Date"); provided, that an owner of $1,000,000 or more of the Bonds may have interest paid by wire transfer to a designated account at a member bank of the Federal Reserve System specified in writing to the Trustee at least five Business Days preceding the Record Date.

This Bond is one of an authorized issue of bonds in the aggregate principal amount of Two Million Six Hundred Fifty-Five Thousand Dollars ($2,655,000) (the "Bonds"), of like date and of like tenor and effect, except as to number, interest rate and date of maturity, issued in exchange for equal principal amounts and corresponding maturities of The City of Charleston Parking System Bond Anticipation Note, Series 2005 (the "Prior Bonds"), under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 16; Chapter 8, Article 12; and Chapter 13, Article 2E, of the Code of West Virginia, 1931, as amended (the "Act"), and Ordinance No 7123, duly enacted by the Council of the City on the 7th day of February, 2005 (the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. This Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally with the Bonds.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE CITY'S PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 A, DATED MARCH 1, 2005, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $8,710,000 (THE "SERIES 2005 A BONDS").

At the option of the City, this Bond is subject to redemption prior to maturity on or after June 1, 2010, in whole or in part, at any time, in inverse order of maturity by lot within a maturity, at par, plus interest, if any, accrued to the date fixed for redemption.

The Bonds are payable only from and secured by a shared first lien on the net revenues to be derived from the operation of the parking system of the City, which net revenues shall be sufficient to pay the principal of, and interest on, all bonds which may be issued for the construction, acquisition, extension or betterment of such parking system as and when the same become due and payable, and which shall be set aside as a special fund thereby 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 said City be obligated to pay the same or the interest hereon except from said special fund provided from the net revenues from the operation of said parking system. The City in said Ordinance

has covenanted and agreed to fix and establish and maintain such rates and collect such fees, rentals or other charges for the service and facilities of said parking system, and to revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to pay one hundred fifteen per centum (115%) of the largest amount of principal and interest which will mature and become due on the Bonds payable from the net revenues then outstanding in any succeeding fiscal year, in addition to paying, as the same shall become due, the necessary expenses of repair (including replacement), maintenance and operation of said parking system during such fiscal year, and all obligations payable out of the net revenues of said parking system during such fiscal year, and that such rates, fees, rentals or other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes, and said City has entered into certain further covenants with the registered owners of the bonds for the terms of which reference is made to said Ordinance.

Subject to the registration requirements, this Bond is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia but may be transferred only upon the surrender hereof at the Office of the Registrar and otherwise as provided by the Ordinance.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond 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 said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the net revenues of the parking system of the City has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on this Bond and the issue of which it is one.

All provisions of the Ordinance, as defined on the reverse hereof, and the 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 HEREOF, the City has caused this Bond to be signed by its Mayor and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated as of the Bond Date designated above.

MAYOR

SPECIMEN

[SEAL]

ATTEST:

CITY CLERK

SPECIMEN

## CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner set forth above.

Date: April 1, 2005

United Bank, Inc.,
as Registrar

By _____
Its Authorized Officer

SPECIMEN

SPECIMEN

**(FORM OF ASSIGNMENT)**

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

_____

_____

_____

_____

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

Dated: _____, _____.

_____

In the presence of:

_____

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**
**STATE OF WEST VIRGINIA**
**COUNTY OF KANAWHA**
**THE CITY OF CHARLESTON**

**PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B**

| | | | |
|---|---|---|---|
| Number: | BR-2 | | |
| Interest Rate: | 3.500% | Cusip: | 160591FK4 |
| Maturity Date: | June 1, 2006 | Bond Date: | April 1, 2005 |
| Registered Owner: | Cede & Co. | | |
| Principal Amount: | $300,000<br>THREE HUNDRED THOUSAND DOLLARS | | |

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special fund provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above, and solely from such special fund

NUMBER
BR-3

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**
**STATE OF WEST VIRGINIA**
**COUNTY OF KANAWHA**
**THE CITY OF CHARLESTON**

**PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B**

| | | | |
|---|---|---|---|
| Number: | BR-3 | | |
| Interest Rate: | 3.700% | Cusip: | 160591FL2 |
| Maturity Date: | June 1, 2007 | Bond Date: | April 1, 2005 |
| Registered Owner: | Cede & Co. | | |
| Principal Amount: | $305,000<br>THREE HUNDRED FIVE THOUSAND DOLLARS | | |

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special fund provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above, and solely from such special fund

NUMBER
BR-4

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**
**STATE OF WEST VIRGINIA**
**COUNTY OF KANAWHA**
**THE CITY OF CHARLESTON**

**PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B**

| | | | |
|---|---|---|---|
| Number: | BR-4 | | |
| Interest Rate: | 3.900% | Cusip: | 160591FM0 |
| Maturity Date: | June 1, 2008 | Bond Date: | April 1, 2005 |
| Registered Owner: | Cede & Co. | | |
| Principal Amount: | $320,000<br>THREE HUNDRED TWENTY THOUSAND DOLLARS | | |

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special fund provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above, and solely from such special fund

NUMBER
BR-5

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**
**STATE OF WEST VIRGINIA**
**COUNTY OF KANAWHA**
**THE CITY OF CHARLESTON**

**PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B**

| | | | |
|---|---|---|---|
| Number: | BR-5 | | |
| Interest Rate: | 4.000% | Cusip: | 160591FN8 |
| Maturity Date: | June 1, 2009 | Bond Date: | April 1, 2005 |
| Registered Owner: | Cede & Co. | | |
| Principal Amount: | $335,000<br>THREE HUNDRED THIRTY-FIVE THOUSAND DOLLARS | | |

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special fund provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above, and solely from such special fund

NUMBER
BR-6

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**
**STATE OF WEST VIRGINIA**
**COUNTY OF KANAWHA**
**THE CITY OF CHARLESTON**

**PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B**

| | | | |
|---|---|---|---|
| Number: | BR-6 | | |
| Interest Rate: | 4.100% | Cusip: | 160591FP3 |
| Maturity Date: | June 1, 2010 | Bond Date: | April 1, 2005 |
| Registered Owner: | Cede & Co. | | |
| Principal Amount: | $345,000<br>THREE HUNDRED FORTY-FIVE THOUSAND DOLLARS | | |

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special fund provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above, and solely from such special fund

NUMBER
BR-7

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**
**STATE OF WEST VIRGINIA**
**COUNTY OF KANAWHA**
**THE CITY OF CHARLESTON**

**PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B**

| | | | |
|---|---|---|---|
| Number: | BR-7 | | |
| Interest Rate: | 4.200% | Cusip: | 160591FQ1 |
| Maturity Date: | June 1, 2011 | Bond Date: | April 1, 2005 |
| Registered Owner: | Cede & Co. | | |
| Principal Amount: | $360,000<br>THREE HUNDRED SIXTY THOUSAND DOLLARS | | |

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special fund provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above, and solely from such special fund

NUMBER
BR-8

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**
**STATE OF WEST VIRGINIA**
**COUNTY OF KANAWHA**
**THE CITY OF CHARLESTON**

**PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B**

| | | | |
|---|---|---|---|
| Number: | BR-8 | | |
| Interest Rate: | 4.300% | Cusip: | 160591FR9 |
| Maturity Date: | June 1, 2012 | Bond Date: | April 1, 2005 |
| Registered Owner: | Cede & Co. | | |
| Principal Amount: | $370,000<br>THREE HUNDRED SEVENTY THOUSAND DOLLARS | | |

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special fund provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above, and solely from such special fund

NUMBER

BR-9

SPECIMEN

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**UNITED STATES OF AMERICA**
**STATE OF WEST VIRGINIA**
**COUNTY OF KANAWHA**
**THE CITY OF CHARLESTON**

**PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B**

| | | | |
|---|---|---|---|
| Number: | BR-9 | | |
| Interest Rate: | 4.400% | Cusip: | 160591FS7 |
| Maturity Date: | June 1, 2013 | Bond Date: | April 1, 2005 |
| Registered Owner: | Cede & Co. | | |
| Principal Amount: | $215,000<br>TWO HUNDRED FIFTEEN THOUSAND DOLLARS | | |

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation organized and existing under the laws of the State of West Virginia (the "City"), for value received, hereby promises to pay, solely from the special fund provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above, and solely from such special fund

**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 Charleston City Code Charter, enacted by the City Council of the City of Charleston on March 6, 1929.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 28th day of March, 2005.

James M. Reishman
City Clerk

Seal

# PART I CHARTER*

---

***Editor's note:** Printed in this part is the city's Charter, being Acts 1929 (municipal charters), ch. 4, as approved by the governor on March 6, 1929, and effective on passage. Amendments are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original. Obvious misspellings have been corrected without notation. For stylistic purposes a uniform system of headings, catchlines and citations to state statute has been used. Additions made for clarity are indicated by brackets.

Notwithstanding the preceding paragraph, the copy of the Charter used in preparation of this part is the copy published in the city's 1975 Code. The editorial note for same states (in part) as follows: "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 have been supplied by the editors for the purpose of clarity."

The editor's note for the Charter as published in the city's 1975 Code also states (in part) as follows:

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 and the several acts of Assembly for that purpose--shall be, and the same is hereby erected into a town corporate, to be known as 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 1857, ch. 127, p. 1555; 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 the name "The City of Charleston."

---

Sec. 1. Charleston made a city corporate and body politic.
Sec. 2. Corporate limits.
Sec. 3. Twenty wards established.
Sec. 4. Municipal authorities; elective officers and qualifications for holding office.
Sec. 5. Officers in addition to elective officers; salaries.
Sec. 6. Corporate power vested in council.
Sec. 7. Enumeration of numerous miscellaneous powers of council; jurisdiction beyond corporate limits.
Sec. 7-a. Authority of council, municipal judge, circuit and common pleas courts and judges relating to city licenses.
Sec. 7-b. Regulation of operation of motor vehicles.
Sec. 8. Persons entitled to vote.
Sec. 9. Boundaries of voting precincts; registration books; registering voters; transfer from one precinct to another; duties of county court.
Sec. 9-a. Special registrars; compensation of county court and clerk; delivery of registration books to city clerk; return to clerk of county court.
Sec. 10. Nomination of candidates.
Sec. 11. When county and city voting precincts to be the same; how elections to be held.
Sec. 12. Law governing preparation of ballot and method of voting.
Sec. 13. The council--Title; how constituted.
Sec. 14. Same--Qualifications; vacancies.
Sec. 15. Same--Mayor; clerk; president pro tempore.
Sec. 16. Same--Representation of new ward.
Sec. 17. Same--Exercise of legislative functions; information, etc., from officers and employees.
Sec. 18. Audit of books and accounts.
Sec. 19. Removal of officers by council or by circuit court of Kanawha County, or by officers having appointment authority.
Sec. 20. Rules and regulations for government of council; record of meetings.
Sec. 21. Regular meetings of council.

Sec. 22. Special meetings of council.
Sec. 23. Council procedure for contested elections, and right of appeal to circuit court.
Sec. 24. Oath of officers; how and within what time officers must qualify; failure to qualify vacates office.
Sec. 25. Bonds of officers and employees; record of bonds.
Sec. 26. Quorum of council; compelling attendance of absent members.
Sec. 27. Voting in council and recording of votes.
Sec. 28. City clerk is ex officio clerk of the council; council minutes and admissibility thereof in evidence.
Sec. 29. Holding two offices.
Sec. 30. Failure of mayor or other officer to make appointments.
Sec. 31. Vacancy in office of mayor or treasurer; vacancy in office of appointive officer; officers hold office until successors qualified, unless previously removed.
Sec. 32. Corruption in office.
Sec. 33. Power of council to compel attendance of witnesses and production of records, administer oaths and punish for contempt.
Sec. 34. Absence or inability of certain officers to perform duties.
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.
Sec. 36. Appointment, compensation, powers and duties of the manager.
Sec. 37. Franchises--Granting; requirements and limitations governing; vote of council required.
Sec. 38. Same--Advertisement of application; submission to voters.
Sec. 39. Committees of council; adjournment of council meetings; postponement of announcement of vote.
Sec. 40. Style of ordinances.
Sec. 41. Passage of ordinances; revision, reenactment or amendment; effective date; publication of caption or title; resolutions and orders.
Sec. 42. Ordinances to be spread on records of council; "Ordinance Record"; code of ordinances.
Sec. 43. Officers conservators of the peace.
Sec. 44. Powers and duties of municipal judge; maximum imprisonment for violation of ordinance; appeal; expense of maintaining persons committed to county jail.
Sec. 45. Qualifications of municipal judge; not to appear as counsel in criminal cases; absence or inability to perform duties; bond.
Sec. 46. Bail.
Sec. 47. Authority of council, manager and police officers relating to nuisances; duties and responsibilities of owners and occupants of property; enforcement.
Sec. 48. Connection with sewer system.
Sec. 49. Construction of sidewalks, curbs and gutters; duty of county clerk to record assessments.
Sec. 50. Annual estimate for tax levy.
Sec. 51. Authority to levy and collect taxes; limit of taxation.
Sec. 52. Collection of taxes.
Sec. 53. Powers of collector.
Sec. 54. Distress for collection of taxes.
Sec. 55. Lien on real estate for taxes--Established; enforcement by suit in court of record; priority of lien.
Sec. 56. Same--Enforcement by tax sale.
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.
Sec. 58. Depositories.
Sec. 59. Bonds--Authority to issue; purposes; interest; limit; taxation to pay interest and principal.
Sec. 59-a. Same--For improvement of streets.
Sec. 60. Same--In anticipation of special assessments for street improvements or sewer construction; limitation on indebtedness.
Sec. 61. Contracts for improvement of streets; assessment of cost.
Sec. 62. Sewerage assessments against owners of abutting property; requiring connection with sewer; including cost of drains in cost of street improvement.
Sec. 62-a. Construction of sewer systems or common, lateral, branch, trunk or combined sewers.
Sec. 63. Resolution declaring necessity for street improvement--Required; procedure for adoption.
Sec. 64. Same--Service on property owners of notice of passage.
Sec. 65. City executive committees of political parties.
Sec. 66. Bonds to pay city's cost of improvement of streets, etc.
Sec. 67. Hearing of property owners affected by improvements; ordinance concerning improvement.
Sec. 68. Special assessments when several kinds of materials have been named in ordinance providing for improvement.
Sec. 69. Vote of council required for public improvement; petition by property owners.
Sec. 70. Assessment when public improvement passes through or by public property or property of institution.
Sec. 71. What cost of improvement shall include.
Sec. 72. Filing statement as prerequisite to action for damages arising out of improvement.
Sec. 73. Liberal construction of proceedings with respect to improvements.
Sec. 74. Election and three-fifths vote required for issuance of bonds; regulations governing.
Sec. 75. Authority of council to lay special levies in years 1929 and 1930 for special purposes.
Sec. 76. Power of council as to public buildings, hospitals, libraries, etc.
Secs. 77--79. Fire department civil service.

Sec. 80. Political activities by members of fire or police departments.
Sec. 81. Service of notice, summons, warrant, etc.
Sec. 82. Contested elections for council.
Sec. 83. Duties of city clerk as to municipal elections.
Sec. 84. Valid ordinances and regulations passed on or before May 1, 1915, not inconsistent with this Charter, to remain in effect until repealed.
Sec. 85. Powers and duties of policemen.
Sec. 86. Compensation of members of council; absence from meetings.
Sec. 87. Reports by manager to council; reports by officers and employees under supervision of manager.
Sec. 88. Additional method for paving streets; assessment certificates.
Sec. 88-a. Void, irregular or omitted assessments.
Sec. 88-b. Assessment certificates to pay for cost of construction of sewers and sewer systems.
Sec. 88-c. Subdividing abutting land for purpose of making assessments.
Sec. 89. Initiation of ordinances by voters.
Sec. 90. Reconsideration of ordinance protested by petition; submission of ordinances to voters.
Sec. 91. Recall of officers.
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.
Sec. 93. Additional method for construction of sidewalks; assessment certificates.
Sec. 93-a. Transcript of property to be furnished by county assessor.
Sec. 94. Authority to issue warrants; vacancy in office of municipal judge.
Sec. 95. Statement of claim before action against city for damages for personal injury.
Sec. 96. Health commissioner.
Sec. 97. Police matron.
Sec. 98. Codification of ordinances.
Sec. 99. Cemeteries and burials.
Sec. 100. Building inspector.
Sec. 101. Power to buy, sell or exchange real estate.
Sec. 102. Zoning--Power of city.
Sec. 102-a. Same--Division of city into zoning districts.
Sec. 102-b. Same--Design of zoning regulations; considerations in making.
Sec. 102-c. Same--Establishment, enforcement and change of zoning regulations and boundaries of zoning districts; hearing.
Sec. 102-d. Same--Change or repeal of zoning regulations and boundaries; protests.
Sec. 102-e. ¶ 1. Same--Zoning commission.
Sec. 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.

**Editor's note:** Except for the "perpetual succession" provision and the provisions incorporating and naming the city, the provisions of Charter § 1 are covered by W. Va. Code § 8-12-1. *See* W. Va. Code § 8-1-6.

## 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:

[Description deleted.]

**Editor's note:** The boundary description has not been published. It has been rendered obsolete by subsequent annexations.

**State law references:** Annexation, W. Va. Code § 8-6-1 et seq.; decrease of corporate limits, W. Va.

Code § 8-7-1 et seq.

### Sec. 3. Twenty wards established.

[Text deleted.]

**Editor's note:** The editor's note for Charter § 3 in the city's 1975 Code states as follows:

This section, as initially enacted by the legislature by Acts 1929, (Munl. 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.

**State law references:** Authority to alter ward boundaries or number of wards, W. Va. Code § 8-5-7.

### 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.

(Ord. No. 870, § 2, 9-19-1966; Ord. No. 1620, § 2; Ord. No. 3040, § 2)

**Editor's note:** The property ownership requirements in Charter § 4 violate W. Va. Const. art. III, § 17. *See State ex rel. Piccirillo v. City of Follansvee,* 160 W. Va. 329, 233 S.E.2d 419 (1977). The note for this section in the city's 1975 Code states that Ord. No. 870 was enacted 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.

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

In addition to the municipal authorities mentioned in section 4 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 [this Charter].

**Editor's note:** The reference in Charter § 5 to the health commissioner is obsolete. *See* Charter § 96 (note). In addition, the last sentence is covered by W. Va. Code § 8-5-12. *See* W. Va. Code § 8-1-6.

### 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].

### 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 repave 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 renumbering 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, recurbing, paving, repaving, 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[craft] 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, slaughterhouses, 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, firewalls, fireplaces, chimneys, boilers, smokestacks 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, lockups, 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 citypurpose, 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 42 of the Code of West Virginia of the edition of 1923, and is now or may be hereafter amended [now W. Va. Code ch. 54]; 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 firecrackers 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 streetcars, 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 exhibition 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 slaughterhouses, 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 divineworship 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 safekeeping 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 47 [now chapter 8, the Municipal Code of West Virginia (W. Va. Code § 8-1-1 et seq.)] 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 [s,] 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 lockup, jail or stationhouse, and to work prisoners found guilty, as the council 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.

**Editor's note:** Most of Charter § 7 is covered by W. Va. Code §§ 8-12-2, 8-12-5 et seq. *See* W. Va. Code § 8-1-6. The provisions of this section pertaining to punishment of possession or sale of intoxicating liquors are superseded by the Alcoholic Beverage Control Act (W. Va. Code § 60-6-1 et seq.). The provisions of this section pertaining to regulation of construction are somewhat inconsistent with W. Va. Code § 8-12-13. Notwithstanding language in this section, penalties imposed for ordinance violations cannot exceed those imposed under W. Va. Code ch. 61 for similar offenses and no term of imprisonment can exceed 30 days. *See* W. Va. Code §§ 8-1-6, 8-11-1, 8-12-5(57).

## 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, taxicab 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 regulation 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.

**State law references:** Authority to require license for anything for which state license is required, unless prohibited by general law, and to impose a reasonable tax thereon not in excess of state tax, W. Va. Code §§ 8-13-4, 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.

**Editor's note:** The provisions of Charter § 7-b appear superseded by W. Va. Code §§ 8-11-1, 8-23-5 (57), 17C-2-7, 17C-2-8. *See* W. Va. Code § 8-1-6.

### 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 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.

**Editor's note:** The provisions of Charter § 8 are superseded by W. Va. Code § 3-1-3. *See State ex rel. Peck v. City Council,* 150 W. Va. 580, 148 S.E.2d 700 (1966). *See also* W. Va. Code § 8-1-6.

### 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 1933, Reg. Sess., ch. 117)

**Editor's note:** The provisions of Charter § 9 are superseded by W. Va. Code §§ 3-1-5, 3-1-6, 3-2-1 et seq. *See* W. Va. Code § 8-1-6.

## 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 [§ 9].

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 1933, Reg. Sess., ch. 117)

**Editor's note:** The provisions of Charter § 9-a are superseded by W. Va. Code § 3-2-1 et seq. *See* W. Va. Code §§ 8-1-6, 8-5-13.

## 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 3 of the Code of West Virginia [W. Va. Code § 3-1-1 et seq.]. 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.

**State law references:** Municipal political party executive committees and municipal primary elections, W. Va. Code § 8-5-14.

## 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.

**Editor's note:** Charter § 11 appears superseded by W. Va. Code §§ 3-1-5, 3-1-6. *See* W. Va. Code § 8-1-6.

### 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 [W. Va. Code § 3-1-1 et seq.], except as changed or modified by this act [this Charter], shall govern all city elections held under the provisions hereof.

### 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 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.

**Editor's note:** The provisions of Charter § 13 mandating the size of the council are superseded by the provisions of Charter § 4.

### 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.

At the election to be held on the third Tuesday in May 1999, 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.

(Ord. No. 6050, 12-5-1994)

**Editor's note:** The number of at-large councilmembers stated in Charter § 14 is superseded by the provisions of Charter § 4.

### 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.

**Editor's note:** Most of the first sentence of Charter § 15 is covered by W. Va. Code §§ 8-9-1, 8-9-2, 8-10-3. *See* W. Va. Code § 8-1-6.

### 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.

### 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.

**State law references:** Powers of municipal governing bodies generally, W. Va. Code §§ 8-11-1 et seq., 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.

**Editor's note:** The provisions of Charter § 18 appear to be covered by, inconsistent with, and not needed in light of W. Va. Code §§ 6-9-7, 8-13-18, 8-13-23. *See* W. Va. Code § 8-1-6.

### 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.

### 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.

**Editor's note:** The provisions of Charter § 20 appear to be covered by W. Va. Code §§ 6-9A-5, 8-9-3, 8-12-5(45), 29B-1-3. This section may be somewhat inconsistent with such provisions. *See also* W. Va. Code § 8-1-6.

### 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.

### 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.

### 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.

**Editor's note:** The provisions of Charter § 23 appear to be superseded by W. Va. Code §§ 3-7-1 et seq., 8-5-17. *See* W. Va. Code § 8-1-6.

### 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].

**State law references:** Oath of municipal officers, 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.

### 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.

**Editor's note:** The quorum requirement in Charter § 26 is covered by W. Va. Code § 8-9-1. The "compelling attendance" requirement in such section may be inconsistent with such statute. *See also* W. Va. Code § 8-1-6.

### 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.

**State law references:** Records of meetings, 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.

**State law references:** Council records and minutes of proceedings, W. Va. Code § 8-9-3; duty of municipal recorder to keep the journal of proceedings of governing body, 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.

### 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.

### 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.

### 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 March 6, 1929], and for which and on which the city is liable or obligated.

### 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 [state] Code [now 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.

### 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.

### 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.

The mayor, members of council, municipal judge and treasurer elected on the third Monday in April 1995, shall begin their term on the first 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.

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.

(Ord. No. 6050, 12-5-1994)

**Editor's note:** The provisions of Charter § 35 relative to the salaries of the mayor and solicitor are superseded by W. Va. Code § 8-5-12. *See* W. Va. Code § 8-1-6. The provisions of Charter § 35 relative to the mayor attending council meetings and presiding at same (i.e., the fourth paragraph) are covered by W. Va. Code § 8-9-1. *See* W. Va. Code § 8-1-6. The fifth paragraph of Charter § 35 is covered by W. Va. Code § 8-10-1. *See* W. Va. Code § 8-1-6.

### Sec. 36. Appointment, compensation, powers and duties of the manager.

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.

**Editor's note:** The provisions of Charter § 36 relative to the salary of the manager are superseded by W. Va. Code § 8-5-12. *See* W. Va. Code § 8-1-6.

### 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.

**Editor's note:** The provisions in Charter § 37 requiring that a franchise can only be granted by ordinance are covered by W. Va. Code § 8-11-3. *See* W. Va. Code § 8-1-6. The 25-year time limitation in Charter § 37 is superseded by W. Va. Code § 8-31-1. *See* W. Va. Code § 8-1-6. The last sentence in Charter § 37 appears inconsistent with W. Va. Code § 8-11-4. *See* W. Va. Code § 8-1-6.

### 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 percent 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 37, as well as such additional conditions, compensations or limitations as council may prescribe.

**Editor's note:** The notice requirements in Charter § 38 are inconsistent with W. Va. Code § 8-31-1. *See* W. Va. Code § 8-1-6. The referendum provisions in Charter § 38 appear inconsistent with W. Va. Code § 8-11-4. *See* W. Va. Code § 8-1-6.

### 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.

### 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."

**State law references:** Ordinance adoption, W. Va. Code § 8-11-4.

### 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 elected 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 bevoid only as to so much thereof as shall not be so expressed. No ordinance shall be revised or reenacted 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 [this Charter] had not been passed.

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.

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.

**Editor's note:** Except for the last paragraph, the provisions of Charter § 41 are superseded by W. Va. Code § 8-11-4. *See* W. Va. Code § 8-1-6.

### 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.

**Editor's note:** The requirement in Charter § 42 that ordinances be placed in a well-bound book is superseded somewhat by W. Va. Code § 57-1-7a. *See* W. Va. Code § 8-1-6. The codification authority in Charter § 42 is superseded by W. Va. Code § 8-11-4(b). *See* W. Va. Code § 8-1-6.

### 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 [this Charter], may be given authority of police officers by the council.

### 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 apenalty 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.

**Editor's note:** The first sentence of Charter § 44 is superseded by W. Va. Code §§ 8-10-1, 8-10-2. *See* W. Va. Code § 8-1-6. Provisions in the second sentence of Charter § 44 referencing violations of state law are invalid, as the municipal judge only has jurisdiction over ordinance violations. *See* W. Va. Code §§ 8-10-1, 8-10-2. *See* W. Va. Code § 8-1-6. The provisions of Charter § 44 pertaining to an appeal are superseded by W. Va. Code § 8-34-1. *See* W. Va. Code § 8-1-6.

## 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.

**Editor's note:** The reference in the last sentence of Charter § 45 to a "justice of the peace" should now be to a "magistrate." *See* W. Va. Code § 50-1-17.

### 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 safekeeping until the trial of his case.

**Editor's note:** Charter § 46 is invalid to the extent that it relates to other than ordinance violations. *See* W. Va. Code §§ 8-10-1, 8-10-2. *See also* W. Va. Code § 8-1-6.

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

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 nonresident 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.

### 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.

**Editor's note:** Charter § 48 is covered by W. Va. Code § 8-18-22. *See* W. Va. Code § 8-1-6.

### 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, relay or repair such sidewalks and gutters, when required, it shall be lawful for the council to have such sidewalks and gutters constructed, relaid 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, relaying 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, relaying 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, relay or repair such sidewalks or gutters. In case of nonresidents 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, relay or repair sidewalks or gutters in front of the property of his or her occupancy, the expense of such construction or relaying 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 nonresident) or occupier, or their agent, was given as herein required.

**Editor's note:** Charter § 49 is preempted to general law by W. Va. Code § 8-13-1. *See* W. Va. Code § 8-1-6.

### 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," [W. Va. Code § 11-8-1 et seq.] and all amendments thereto, except where said last-named act shall be inconsistent with this act [this Charter] as to limit of taxation.

**Editor's note:** Charter § 50 is covered by W. Va. Code § 11-8-1 et seq. *See also* 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.

**Editor's note:** To the extent that Charter § 51 relates to taxation of real and personal property, it is preempted to general law by W. Va. Code § 8-13-1. *See* W. Va. Code §§ 8-1-6, 11-6-6d. Authority to tax dogs is also found in W. Va. Code § 8-13-10. As there apparently no longer is a state capitation tax, the provisions in this section relative to same are obsolete.

## 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 percent 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 percent 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 attached 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.

**Editor's note:** Charter § 52 is preempted to general law by W. Va. Code § 8-13-1. *See* W. Va. Code § 11A-1-1 et seq.

## 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.

### 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 assessments and in all respects have the same power to enforce the collection thereof as the sheriff has to enforce the collection of state taxes.

**Editor's note:** The provisions of Charter § 54 are obsolete insofar as they relate to the capitation tax. As to other taxes, Charter § 54 appears preempted to general law by W. Va. Code § 8-13-1. *See* W. Va. Code § 11A-1-1 et seq.

### 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 nonpayment 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.

**Editor's note:** The provisions of Charter § 55 are preempted to general law by W. Va. Code § 8-13-1. *See also* W. Va. Code § 11A-1-1 et seq.

### 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.

**Editor's note:** The provisions of Charter § 56 are preempted to general law by W. Va. Code § 8-13-1. *See* W. Va. Code § 11A-1-1 et seq.

### 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 schoolhouses, 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 schoolhouses, 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 schoolhouses 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.

**Editor's note:** Insofar as Charter § 57 relates to roads, it is superseded by W. Va. Code § 17-10-1 et seq.

## 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 percent [percentage] 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.

**Editor's note:** Charter § 58 is superseded by W. Va. Code § 18-13-22a et seq. *See* W. Va. Code § 8-1-6.

**State law references:** Investment of municipal funds, W. Va. Code §§ 8-13-22a, 12-6-1 et seq.

## 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, waterworks, 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 per centum 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 percent; 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.

**Editor's note:** Charter § 59 appears obsolete in light of W. Va. Code § 13-1-1 et seq.

### 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.

**Editor's note:** Charter § 59-a is preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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, waterworks, 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.

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.

**Editor's note:** The provisions of Charter § 60 are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

## 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 advertisement in which the council shall reserve the right to reject any and all bids, be let to the lowest reasonable bidder. The contractor shall look only to the city for the payment of the work, and in no sense to the abutting landowners, 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 streetcar or other railway company operating such street or other railway unless otherwise provided by the franchise of such streetcar 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 landowners 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 landowner 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 [this Charter], 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 landowners 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 percent 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 thesame 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.

**Editor's note:** The provisions of Charter § 61 are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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 landowner 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, rights-of-way or easements, one in the front and one in the rear of said lot shall be assessed on both of said streets, alleys, rights-of-way or easements, if a sewer is constructed in both such streets, alleys, rights-of-way 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 landowners shall be paid by theparties 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.

**Editor's note:** The provisions of Charter § 62 are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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 benefit 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 landowner 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, rights-of-way or easements, one in the front and one in the rear of said lot shall be assessed on both of said streets, alleys, rights-of-way, or easements, if a sewer is constructed on both suchstreets, alleys, rights-of-way, 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 landowners shall be paid by the parties liable therefor to the saidtreasurer 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.

**Editor's note:** The provisions of Charter § 62-a are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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.

**Editor's note:** The provisions of Charter § 63 are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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.

**Editor's note:** The provisions of Charter § 64 are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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.

**State law references:** Municipal executive committees, 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 [this Charter], 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.

**Editor's note:** The provisions of Charter § 66 are deleted as preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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.

**Editor's note:** The provisions of Charter § 67 are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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 [this Charter], shall be given in the manner provided for in said section of this act [this Charter].

**Editor's note:** The provisions of Charter § 68 are preempted to general law by W. Va. Code §§ 8-13-

1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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.

**Editor's note:** The provisions of Charter § 69 are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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, cemetery, structure for the fire department, waterworks, school building, infirmary, market house, work house, hospital, house of refuge, bridge, gas works, public prisons, courthouse, 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.

**Editor's note:** The provisions of Charter § 70 are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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.

**Editor's note:** The provisions of Charter § 71 are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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.

**Editor's note:** The provisions of Charter § 72, while not directly relating to a special assessment (so that it is preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq.-- *see* W. Va. Code § 8-1-6), reference a section that is so preempted and to the extent a claim

is based upon negligence, this section is superseded by W. Va. Code § 8-12-20.

### 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.

**Editor's note:** The provisions of Charter § 73 are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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 [see now W. Va. Code § 8-16-9 et seq.], 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:** The provisions of Charter § 74 are obsolete in light of W. Va. Code § 13-1-1 et seq. and/or preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

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

[Text deleted.]

**Editor's note:** The editor's note in the city's 1975 Code for Charter § 75 states as follows:

The text of this section, being Acts 1929 (Munl. 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.

**Editor's note:** The provisions of Charter § 76 are covered by W. Va. Code §§ 8-12-1, 8-12-5.

### Secs. 77--79. Fire department civil service.

[Text deleted.]

**Editor's note:** The editor's note in the city's 1975 Code for Charter §§ 77, 78 and 79 states as follows:

The text of these sections, being Acts 1929 (Munl. 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 organization 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.

**Editor's note:** Insofar as Charter § 80 relates to firefighters, it is inconsistent with W. Va. Code § 8-15-24. *See* W. Va. Code § 8-1-6.

**State law references:** Political activity of members of paid police departments, 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].

### Sec. 82. Contested elections for council.

Whenever one or more members of the council shall be a candidate for reelection, 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.

**Editor's note:** The provisions of Charter § 82 are superseded by W. Va. Code §§ 8-5-17, 3-7-1 et seq. *See* W. Va. Code § 8-1-6.

### 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.

### 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.

**Editor's note:** The editor's note in the city's 1975 Code for Charter § 84 states as follows:

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.

**Editor's note:** The provisions of Charter § 85, insofar as they relate to the appointment, promotion, dismissal, etc., of police, are superseded by W. Va. Code § 8-14-6 et seq. In the last sentence the term "constable" should now be "deputy sheriff." *See* W. Va. Code § 50-1-17.

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

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.

**Editor's note:** The compensation provided for in Charter § 86 probably is obsolete. *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.

## 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, repaved, 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 § 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 improving 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, 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, 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.

**Editor's note:** The provisions of Charter § 88 are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

### 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 nonresident 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.

**Editor's note:** The provisions of Charter § 88-a are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

## 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, 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.

**Editor's note:** The provisions of Charter § 88-b are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

## 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.

**Editor's note:** The provisions of Charter § 88-c are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

## 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 percent 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 percent 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.

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

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 percent 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 percent but not sufficient to equal in number at least fifteen percent 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.

### 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 percent 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 percent 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 qualified voters to equal in number at least thirty percent 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.

**Editor's note:** It appears that the 25 percent figure in Charter § 91 should be 20 percent. *See* W. Va. Code § 8-12-4(3).

## 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 [§§ 89--91] 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 [this Charter], 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 § 9] shall forthwith certify the result of their examination to the city clerk and such city clerkshall serve a copy of such certificate upon the person or persons named in the petition as representing 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 [§§ 89--91] 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.

## 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.

**Editor's note:** The provisions of Charter § 93 are preempted to general law by W. Va. Code §§ 8-13-1, 8-16-1 et seq., 8-17-1 et seq. and 8-18-1 et seq. *See* W. Va. Code § 8-1-6.

## 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.

**Editor's note:** The provisions of Charter § 93-a are superseded by W. Va. Code § 11-3-6.

## 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.

**Editor's note:** To the extent that Charter § 94 relates to various officials of the police department, it is superseded by W. Va. Code §§ 8-10-1, 8-10-2, 8-10-4. *See* W. Va. Code § 8-1-6. This section is also invalid to the extent that it applies to other than ordinance violations. *See* W. Va. Code §§ 8-10-1, 8-10-

2, 8-10-4; *State ex rel. Hill v. Smith,* 305 S.E.2d 771 (W. Va. 1983). *See* W. Va. Code § 8-1-6.

### 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.

**Editor's note:** The provisions of Charter § 95 are superseded by W. Va. Code § 8-12-20. *See* W. Va. Code § 8-1-6.

### 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 § 85] in said Charter.

**Editor's note:** The editor's note for Charter § 96 in the city's 1975 Code states:

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.

**State law references:** Combined city-county boards of health, W. Va. Code § 16-2-3; local health officers generally, W. Va. Code § 16-2-1 et seq.

### 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.

**Editor's note:** The second sentence of Charter § 97 is superseded by W. Va. Code § 8-5-12. *See* W. Va. Code § 8-1-6. In addition, the editor's note in the city's 1975 Code states as follows:

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.

## 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 within 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.

**State law references:** Ordinance codification, W. Va. Code § 8-11-4(b).

## Sec. 99. Cemeteries and burials.

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.

**State law references:** Authority to acquire and maintain cemeteries and to regulate interments therein, W. Va. Code § 8-12-5(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 the city and laws of the state concerning buildings are enforced and perform such other duties as the manager or council may direct.

### 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.

**Editor's note:** The provisions of Charter § 101 are covered by W. Va. Code § 8-12-1. *See* W. Va. Code § 8-1-6.

### 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 bylaws 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 [this Charter], that the exemption of such building or structure is reasonably necessary to the convenience or welfare of the public.

**Editor's note:** The provisions of Charter § 102 are covered by W. Va. Code § 8-24-39 et seq. *See* W. Va. Code § 8-1-6.

### 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 [§§ 102-b--102-e], 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.

**Editor's note:** The provisions of Charter § 102-a are covered by W. Va. Code § 8-24-39 et seq. *See* W. Va. Code § 8-1-6.

### 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.

**Editor's note:** The provisions of Charter § 102-b are covered by W. Va. Code § 8-24-39 et seq. *See* W. Va. Code § 8-1-6.

### 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.

**Editor's note:** The provisions of Charter § 102-c are superseded by W. Va. Code § 8-24-45 et seq. *See* W. Va. Code § 8-1-6.

### 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 percent 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.

### 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.

**Editor's note:** The provisions of Charter § 102-e. ¶ 1 are superseded by W. Va. Code § 8-24-39 et seq. *See* W. Va. Code § 8-1-6.

### 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.

# 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.

OFFICER'S OATH

(Sec. 24. City Charter)

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

I, James M. Reishman, WHO HAVE BEEN DULY APPOINTED TO THE OFFICE

OF City Clerk 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 DISCHARGOE 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 THEREFOR, SO HELP ME GOD.

James M. Reishman

Subscribed and sworn to before me the undersigned authority, this 22nd day of June, 1999.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Melissa G. Hughes
Office of City Clerk
P. O. Box 2749
Charleston, WV 25330
My Commission Expires February 3, 2008

Melissa G. Hughes

Notary Public in and for Kanawha County

My commission expires on the 3 day of February, 1999.

# 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, Vic Grigoraci,

who has been duly elected to the office of Treasurer 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, 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, William J. Harris,

who has been duly elected to the office of Council 2nd 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 12 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

# 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 Mac Lanham
(signature)

Subscribed and sworn to before me the undersigned authority,

this 16th day of June, 2003.

SEAL
PUBLIC
ST VIRGINIA
H BALDWIN
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 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.

James D. Ealy
(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, 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. 501 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. 501 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, 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, 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, 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

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, 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, 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, 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, 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, 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, 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 H. 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, 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.

Quatra 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, 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, 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.

Mike Clowser
(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, 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, 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, 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, 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, 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, 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.

# *JOURNAL*

# OF THE

# *COUNCIL*

# CITY OF CHARLESTON

# WEST VIRGINIA

## January 18, 2005

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE SECOND MEETING IN THE MONTH OF JANUARY ON THE 18th DAY, IN THE YEAR 2005, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED JACK HARRISON, AND THE PLEDGE OF ALLEGIANCE WAS LED BY ED TALKINGTON.

THE CLERK CALLED THE ROLL AND THE FOLLOWING MEMBERS ANSWERED TO THEIR NAMES:

| | | |
|---|---|---|
| CHESTNUT | CLOWSER | DEITZLER |
| DAVIS | | HALL |
| HANNA | HARRIS | HARRISON |
| HIGGINS | JONES | LANE |
| LANHAM | LOEB | MORTON |
| MILLER | MONROE | MARKHAM |
| | REED | REISHMAN |
| ROBERTSON | SADD | TALKINGTON |
| WARE | WEINTRAUB | WHITE |
| MAYOR JONES | | |

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.

## JANUARY 18, 2005, SECOND MEETING

### PUBLIC SPEAKERS

1. Jerry Pauley, Police Chief

# CLAIMS

1. A claim of D. Stephen Walker, 1410 Connell Road, Charleston, WV; alleges damage to property.
   Refer to City Solicitor.

2. A claim of Robin Armstrong, 510 Maxwell St., Charleston, WV; alleges damage to property.
   Refer to City Solicitor.

3. A claim of Ellen Cannon, 4404 Blackwell St., South Charleston; alleges damage to property.
   Refer to City Solicitor.

### COMMUNICATIONS

The Clerk read the following appointments.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Housing Authority

Date: January 11, 2005

This is to inform you and the Charleston City Council that I have reappointed Richard Cooke, 1005 Dartmouth Avenue, Charleston, West Virginia 25302, as a member of the Charleston Housing Authority with said term to expire December 10, 2008.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Housing Authority

Date: January 11, 2005

This is to inform you and the Charleston City Council that I have reappointed Vernadine Crothers, 2102 Lippert Street, Apartment 360, Charleston, West Virginia 25312, as a member of the Charleston Housing Authority with said term to expire December 10, 2009.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

*The Clerk read the following report from the Municipal Planning Commission:*

Honorable Danny Jones and
City Council Members
Charleston, West Virginia 25301

Dear Mayor Jones and Councilmember's:

On January 5, 2005, the Municipal Planning Commission held public hearings and its regular monthly meeting. The following case should be referred to the Council Committee on Planning:

Bill No. 7122 – Petition of the University of Charleston requesting to rezone from an R-4 district to an R-O district those certain parcels of land known as 2505, 2506, 2508, 2509, 2510, & 2512 Cherokee Avenue, identified on Kanawha City Tax Map 20, as Parcels 38,39,40,41,54,55, & 27.

Special Permit # 1185 – Application of Gregory Miles dba Southern BBQ requesting a special permit for a restaurant/catering business serving alcoholic beverages in the Downtown Village Urban Renewal District accessory to the business located at 713 Lee Street, East.

Sincerely,
Municipal Planning Commission
Phyllis White

The Mayor referred the Cases to the Planning Committee of Council.

## MISCELLANEOUS RESOLUTIONS

NONE

## REPORTS OF STANDING COMMITTES

*PLANNING*

Councilwoman Mary Jean Davis, Chairperson of the Council Committee on Planning, submitted the following reports.

1. Your Committee on Planning has had under consideration Bill No. 7110, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 7110 – A bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 7th day of March 1983, as amended, and the map made a part thereof, by rezoning from an R-4 district to a C-6 district, those certain parcels of land situated at 1718 Fifth Avenue, Charleston, West Virginia.

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

1. The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 7th day of March 1983, as amended, is hereby amended by rezoning from an R-4 district to a C-6 district the whole of the following described parcels of land:

Parcels 202,202.1, 202.2 and 203 as shown on West Charleston Tax Map No. 10. Said parcels commonly known as 1718 Fifth Avenue, Charleston, West Virginia.

2. The Zoning Map, attached and made a part of said Zoning Ordinance, is hereby amended in accordance with Section 1 of this ordinance.

3. All ordinances or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

The question being on the passage of the Bill a roll call was taken and there yeas-26, nays-0, absent-2, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Ealy, Nielsen.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7110, passed.

2. Your Committee on Planning has had under consideration Bill No. 7111, and reports the same to Council with the recommendation that the Bill do pass.

A Bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 7th day of March, 1983, as amended, and the map made a part thereof, by rezoning from R-4 and C-6 districts to a MMC district, that certain parcel or tract of land identified as Lot A of the Memorial Medical Complex Addition, in Kanawha City, in the City of Charleston, Kanawha County, State of West Virginia, owned by Charleston Area Medical Center, Inc., a West Virginia nonprofit, nonstock corporation.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA THAT:

1. The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 7th day of March, 1983, as amended, is hereby amended by rezoning from R-4 and C-6 districts to a MMC district the whole of the following described parcel of land:

Beginning at the intersection of the northerly right of way line of MacCorkle Avenue (WV Route 61) with the westerly right of way line of former Thirty-Third Street, S.E. (now closed and vacated and formerly known as Third Street), said point being located at the southeasterly corner of former Lot 16 of Block 14 of the Revised Map of Kanawha City, as recorded in the Office of the Clerk of the County Commission of Kanawha County in Map Book 2, at Pages 148 and 149; thence leaving MacCorkle Avenue and with the westerly right of way line of former Thirty-Third Street, S.E., N.05°37'20"E. 596.00 feet to the northeasterly corner of former Lot 8 of Block 13 of the Revised Map of Kanawha City; thence crossing former Thirty-Third Street, S.E., S.84°22'40"E., intersecting the easterly right of way line of former Thirty-Third Street, S.E. at 60.00 feet, said point being the intersection of the easterly right of way line of former Thirty-Third Street, S.E. with the southerly right of way line of Staunton Avenue, S.E. (formerly known as Ohio Avenue), and continuing on this bearing, with the southerly right of way line of Staunton Avenue, S.E., for a total distance on this line of 117.98 feet, to a point in the northerly line of former Lot 2 of Block 19 of the Revised Map of Kanawha City; thence leaving Staunton Avenue, S.E. and running through said former Lot 2 of Block 19 and former Lot 3 of Block 19 on a curve to the right for a distance 123.07 feet, said curve having a radius of 95.39 feet, the chord of which bears S.31°20'18"E. for a distance of 114.71 feet; thence continuing through former Lot 3 of Block 19, S.05°37'20"W., intersecting the northerly right of way line of a former sixteen foot wide alley (now closed and vacated) at 28.24 feet, crossing the former alley and intersecting the southerly right of

way line of said former alley at 44.34 feet, and continuing on this bearing, through former Lot 11 of Block 19, for a total distance on this line of 153.41 feet; thence continuing through former Lot 11 of Block 19, S.10°11'46"W., intersecting the northerly right of way line of former Noyes Avenue, S.E. (now closed and vacated and formerly known as Kentucky Avenue) at 10.97 feet, crossing former Noyes Avenue, S.E. and intersecting the southerly right of way line of former Noyes Avenue, S.E. at 44.34 feet, and continuing on this bearing, through former Lot 3 of Block 18, for a total distance on this line of 141.03 feet; thence continuing through former Lot 3 of Block 18 on a curve to the left, intersecting the northerly right of way line of a former sixteen foot wide alley (now closed and vacated) at 50.47 feet, crossing the former alley and intersecting the southerly right of way line said former alley at 66.70 feet, and continuing along said curve, through former Lot 11 of Block 18, for a total distance on this line of 96.31 feet, said curve having a radius of 236.61 feet, the chord of the entire line herein described bearing S.01°27'55"E. for a distance of 95.65 feet; thence continuing through former Lot 11 of Block 18, S.13°07'36"E. 11.64 feet; thence continuing through former Lot 11 of Block 18 on a curve to the right for a distance 53.47 feet, said curve having a radius of 163.39 feet, the chord of which bears S.03°45'08"E. for a distance of 53.23 feet; thence continuing through former Lot 11 of Block 18, S.05°37'20"W. 11.93 feet; thence continuing through former Lot 11 and former Lot 12 of Block 18 on a curve to the right for a distance 62.79 feet, said curve having a radius of 39.97 feet, the chord of which bears S.50°37'20"W. for a distance of 56.53 feet to a point in the northerly line of a permanent construction easement six feet in width, said permanent construction easement being shown on Sheets 7 and 8 of 29 in the plans for West Virginia Department of Highways State Project 320-119-14.47, Federal Project F-193(13); thence with the northerly line of said permanent construction easement, N.84°22'40"W., intersecting the easterly right of way line of former Thirty-Third Street S.E. at 99.94 feet, said point being the northwesterly corner of said permanent construction easement, and continuing from said point forward with the northerly right of way line of MacCorkle Avenue, for a total distance on said line of 159.94 feet to the place of beginning, containing 2.50 acres, more or less, being all of Lot A of the Memorial Medical Complex Addition.

2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is hereby amended in accordance with Section 1 of this Ordinance.

3. All prior ordinances, or parts of ordinances, inconsistent with this Ordinance, are hereby repealed to the extent of said inconsistency.

The question being on the passage of the Bill a roll call was taken and there yeas-25, nays-0, absent-2, abstain – 1, as follows:
YEAS: Chestnut, Clowser, Deitzler, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane,

Lanham, Loeb, Markham, Miller, Monroe, Morton, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Ealy, Nielsen.
ABSTAIN: Davis.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7111, passed.

3. Your Committee on Planning has had under consideration Bill No. 7112, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 7112 – A bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 16th day of November 2004, as amended, and the map made a part thereof, by rezoning from an R-4 district to a R-O district, those certain parcels of land situated at 2503 Kanawha Avenue, Charleston, West Virginia.

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

1. The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 16th day of November 2004, as amended, is hereby amended by rezoning from an R-4 district to a R-O district the whole of the following described parcels of land:

   Parcel 46.1 as shown on Kanawha City Tax Map No. 2, and that portion of Parcel No. A as shown on the Kanawha City Map No. 2 that abuts said Parcel No. 46.1 to the south thereof. Said parcels are commonly known as 2503 Kanawha Avenue, Charleston, West Virginia, and the former C&O railroad siding.

2. The Zoning Map, attached and made a part of said Zoning Ordinance, is hereby amended in accordance with Section 1 of this ordinance.

3. All ordinances or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

The question being on the passage of the Bill a roll call was taken and there yeas-26, nays-0, absent-2, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Ealy, Nielsen.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7112, passed.

4. Your Committee on Planning has had under consideration Special Permit #1182 attached hereto and made a part thereof, and reports the same to Council with the recommendation that he Special Permit be approved.

Your Committee finds the following:

1. The request complies with the zoning requirements relating to parking requirements.
2. The Municipal Planning Commission and the City Council have approved similar requests in the area.
3. The addition should not cause damage, hazard, nuisance, or be a detriment to persons in the vicinity.

And reports the same to Council with the recommendation that he Special Permit be approved.

The question being on the passage of the Special Permit a vote was taken. There being no dissent the Mayor declared Special Permit #1182 approved.

**STREETS AND TRAFFIC**

Councilman David Higgins, 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. 7115, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 7115 - A Bill to establish a Stop intersection at the intersection of Twilight Drive and Green Street requiring vehicles northbound on Green Street to stop and requiring vehicles southbound on Twilight Drive to stop except when turning right and amending 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, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

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

Section 1. A Stop intersection on Twilight Drive and Green Street requiring vehicles northbound on Green Street to stop and requiring and requiring vehicles southbound on Twilight Drive to stop except when turning right 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 and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, shall be and hereby are amended, to conform to this Ordinance.

Section 3. All prior Ordinances, inconsistent with this Ordinance are hereby repealed to the extent of said inconsistency.

The question being on the passage of the Bill a roll call was taken and there yeas-26, nays-0, absent-2, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Ealy, Nielsen.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7115, passed.

2. Your Committee on Streets and Traffic has had under consideration Bill No. 7116, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 7116 - A Bill to establish a Stop intersection at the intersection of Twilight Drive and Heath Street requiring vehicles westbound on Twilight Drive to stop and requiring vehicles eastbound on Heath Street to stop except when turning right and amending 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, Section 263, Division 2, Article 4, Chapter114, to conform therewith.

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

Section 1. A Stop intersection on Twilight Drive and Heath Street 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 and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, shall be and hereby are amended, to conform to this Ordinance.

Section 3. All prior Ordinances, inconsistent with this Ordinance are hereby repealed to the extent of said inconsistency.

The question being on the passage of the Bill a roll call was taken and there yeas-26, nays-0, absent-2, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Ealy, Nielsen.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7116, passed.

3. Your Committee on Streets and Traffic has had under consideration Bill No. 7117, and reports

the same to Council with the recommendation that the Bill do pass.

A Bill to amend and re-enact Ordinance No. 4206, passed by Council on August 17, 1987 relating to establishing a 20 miles per hour speed limit on Somerset Drive between Summit Drive and Edgewood Court 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, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

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

Section 1. 20 miles per hour speed limit on Somerset Drive between Summit Drive and Edgewood Court 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, Section 263, Division 2, Article 4, Chapter 114, shall be and hereby are amended, to conform to this Ordinance.

Section 3. All prior ordinances, inconsistent with this Ordinance are hereby repealed to the extent of said inconsistency.

The question being on the passage of the Bill a roll call was taken and there yeas-26, nays-0, absent-2, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Ealy, Nielsen.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7117, passed.

4. Your Committee on Streets and Traffic has had under consideration Bill No. 7118, and reports the same to Council with the recommendation that the Bill do pass.

A Bill to amend and re-enact Ordinance No. 6938, passed by Council on November 4, 2002 relating to establishing a No Parking Anytime Tow Away Zone on the southerly side of Costello Street from Dayton Drive to a point 260 feet west of Grove Avenue 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, Section 263,Division 2, Article 4, Chapter 114, to conform therewith.

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

Section 1. A Bill to AMEND and REENACT ORDINANCE NO. 6938, passed by Council November 4, 2002 relating to establishing a No Parking Anytime Tow Away Zone on

the southerly side of Costello Street from Dayton Drive to a point 260 feet west of Grove 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, two thousand three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, shall be and hereby are amended, to conform to this Ordinance.

Section 3. All prior Ordinances, inconsistent with this Ordinance are hereby repealed to the extent of said inconsistency.

The question being on the passage of the Bill a roll call was taken and there yeas-26, nays-0, absent-2, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Ealy, Nielsen.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7118, passed.

5. Your Committee on Streets and Traffic has had under consideration Bill No. 7119, and reports the same to Council with the recommendation that the Bill do pass.

A Bill to establish a No Parking Anytime Tow-Away zone on Market Drive from Camden Drive to a point 125 feet north of Camden Drive and amending 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, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.

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

Section 1. A No Parking Anytime Tow-Away zone on Market Drive to a point 125 feet north of Camden Drive 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 and three, as amended, Traffic Law, Section 263, Division 2, Article 4, Chapter 114, shall be and hereby are amended, to conform to this Ordinance.

Section 3. All prior Ordinances, inconsistent with this Ordinance are hereby repealed *to the* extent of said inconsistency.

The question being on the passage of the Bill a roll call was taken and there yeas-26, nays-0, absent-2, as follows:

YEAS: Chestnut, Clowser, Davis, Deitzler, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Ealy, Nielsen.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7119, 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. 729-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 729-05: "Authorizing the Mayor to sign a renewal of the Letter of Credit with Bank One for Parking System Revenue Bonds, Series 1994-A, 1994-B, and 1995-A; and further authorizing payment in the amount of $93,488.16 for renewal of the Letter of Credit for the period February 1, 2005 through January 31, 2006."

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

That the Mayor is hereby authorized and directed to sign a renewal of the Letter of Credit with Bank One for Parking System Revenue Bonds, Series 1994-A, 1994-B, and 1995-A, and further authorizing payment in the amount of Ninety-three Thousand Four Hundred Eighty-eight Dollars and Sixteen Cents ($93,488.16) for renewal of the Letter of Credit for the period February 1, 2005 through January 31, 2006.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 729-05, adopted. Abstain - Loeb

2. Your Committee on Finance has had under consideration Resolution No. 730-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 730-05: "Authorizing the Mayor to increase the City's percentage contribution to the Charleston Convention and Visitors Bureau provided the Bureau implements changes to improve its public accountability."

WHEREAS, the Charleston Convention and Visitors Bureau is facing a serious financial problem with current outstanding debt reported to be at least $200,000; and

WHEREAS, the Bureau's outstanding indebtedness was incurred with limited or ineffective oversight; and

WHEREAS, a professional review of the Bureau's operations by Marshall Murdaugh called attention to the self-perpetuating nature of the Board membership as a fundamental warning sign in terms of ineffective management oversight and limited public accountability; and

WHEREAS, substantially all revenues of the Bureau are public moneys with the primary source being the City of Charleston, and, because of the fiduciary duty for proper accounting and management, it is proper that the City maintain fiscal control and that it assist the Bureau in this time of tremendous opportunity to promote our City; and

WHEREAS, the Kanawha County Commission has also agreed to provide financial oversight and assistance to help lead the Bureau under its new management toward a more productive and fiscally responsible future; now, therefore

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

That the Mayor is hereby authorized and directed to increase the City's contribution to the Convention and Visitors Bureau from fifty percent (50%) to sixty percent (60%) of moneys received from the Hotel-Motel Taxes collected in the City of Charleston during the next 12 months if, and only if, the by-laws of the Convention and Visitors Bureau are changed so that:

(1) Three people representing public entities serve on the Board of Directors by position, while all other Board members are appointed by the Mayor of Charleston and confirmed by the City Council of Charleston with terms that are staggered; and

(2) All meetings of the Bureau's Board of Directors and its standing committees are open to the public, except as permitted under the State of West Virginia's open meetings law; and

(3) The Bureau will submit its annual budget for review by City Council prior to the beginning of each fiscal year.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 730-05, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 731-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 731-05, a resolution authorizing the issuance by the City of Charleston, West Virginia of not more than $17,500,000 in aggregate principal amount of its Multifamily Housing Revenue Bonds (Vista View Apartments Project) Series 2005, in one or more series, to provide funds to acquire, construct and equip a commercial project in Berkeley County, West Virginia consisting of the acquisition and rehabilitation of an existing multifamily rental housing project and to pay such other costs in connection therewith; approving the loan of said bond proceeds; authorizing the execution and delivery of a trust indenture, a financing agreement, a regulatory agreement, a bond placement agreement, an interest rate agreement and an assignment, and

authorizing the distribution of offering documents; and taking other necessary actions in connection with the issuance and sale of such bonds.

WHEREAS, the City of Charleston, West Virginia (the "Issuer"), a municipal corporation, is a duly organized governmental body created by the Constitution of the State of West Virginia (the "State"), is validly existing and in good standing under the Constitution and laws of the State, is a political subdivision thereof, and is authorized by the Industrial Development and Commercial Development Bond Act, Chapter 13, Article 2C, of the Code of West Virginia of 1931, as amended (the "Act"), in furtherance of the public purposes as Section 2 of the Act, to issue its revenue bonds to pay the cost of commercial projects; and

WHEREAS, Vista View Apartments L.P., a West Virginia limited partnership (the "Company") has previously requested the Issuer to issue its Multifamily Housing Revenue Bonds (Vista View Apartments Project), Series 2004 in the principal amount of not to exceed $10,000,000, in one or more series (the " Bonds Originally Authorized"), the proceeds of which will be used to finance (i) the acquisition, construction and equipping by the Company of a commercial project in the City of Charleston, West Virginia, specifically consisting of (i) the acquisition of the real and personal property currently known as the "Spring Hill Apartments," comprised of one, two, and three bedroom apartments, and four bedroom townhouse apartments in 16 separate buildings located at 1300-1385 Roseberry Circle, Charleston, West Virginia (the "Existing Facilities"), and (ii) the construction and equipping of renovations and improvements to the Existing Facilities (i) and (ii) hereinafter referred to as the "Project"; and (iii) costs associated with the issuance of the Bonds Originally Authorized; and

WHEREAS, on September 7, 2004, the Issuer approved a resolution (the "Original Resolution") authorizing the issuance of its Multifamily Housing Revenue Bonds (Vista View Apartments Project), Series 2004 in the principal amount of not to exceed $10,000,000; and

WHEREAS, the Company has advised the Issuer that due to restructuring of the proposed financing, it is requesting that the Issuer authorize and approve the issuance of up to an additional $7,500,000 of its bonds, such that the total amount approved shall be an amount not to exceed $17,500,000, such bonds to be redesignated as "Multifamily Housing Revenue Bonds (Vista View Apartments Project) Series 2005" (The "Bonds"); and

WHEREAS, the Issuer has determined that the issuance of the Bonds will benefit the citizens of the City of Charleston, West Virginia and is in furtherance of the public purposes as Section 2 of the Act,

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Charleston, West Virginia as follows:

Section 1. That the proposed issuance of the Bonds, as described in the Indenture, is hereby approved and authorized, pursuant to and in accordance with Article 2C, Chapter 13 of the Code of West Virginia, 1931, as amended (the "Act").

Section 2. The provisions hereof are not intended to, and shall not be construed or interpreted

to, either (a) obligate or authorize the expenditure of any funds or moneys of the Issuer or derived by the Issuer from any source whatsoever other than the proceeds from issuance and sale of the Bonds as provided for herein, or (b) create any personal liability on the part of the officers or members of the Issuer. The Bonds shall never constitute an indebtedness of the Issuer within the meaning of any constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Issuer. Neither the Bonds nor the interest thereon shall be a charge against the general credit nor taxing powers of the Issuer and such fact shall be plainly stated on the face of each Bond.

Section 3. That the provisions of this Resolution are hereby declared to be separable, and, if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

Section 4. That all acts and deeds of any officer or agent of the Issuer in furtherance of the purposes and intent of this Resolution hereby are ratified, confirmed and made the acts and deeds of the Issuer.

Section 5. That all resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution, are, to the extent of such conflict, hereby repealed, provided, however, that except to the extent modified hereby, the Original Resolution shall remain in full force and effect.

Section 6. That the members of the City Council of the Issuer hereby find and determine that all formal actions relative to the adoption of this Resolution were taken in an open meeting of the Issuer and that all deliberations of the members of the Issuer which resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements

Section 7. That this Resolution shall become effective immediately upon its adoption.

Adopted by the City of Charleston, West Virginia, a municipal corporation, at a meeting held in Charleston, West Virginia, on the 18th day of January 2005.

(Seal) By: _____
Mayor

Attest:

By: _____
City Clerk

CERTIFICATION

The undersigned, being the duly appointed and qualified acting City Clerk of the City of Charleston,, West Virginia does hereby certify that the foregoing Resolution was duly adopted by

the Issuer at its meeting held on January 18, 2005, a quorum being present and acting throughout, and is a true, correct and complete copy as witness my hand and the Seal of the City of Charleston West Virginia this 18th day of January, 2005.

City Clerk

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-2, as follows:
YEAS: Chestnut, Clowser, Davis, Deitzler, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Ealy, Nielsen.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 731-05, adopted.

4. Your Committee on Finance has had under consideration Resolution No. 732-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 732-05 : "Authorizing the Mayor to sign a revised Stadium License, Lease and Service Agreement with West Virginia Baseball, LLC, d/b/a West Virginia Power."

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

That the Mayor is hereby authorized and directed to sign a revised Stadium License, Lease and Service Agreement with West Virginia Baseball, LLC, d/b/a West Virginia Power.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 732-05, adopted. Abstain - Sadd

5. Your Committee on Finance has had under consideration Resolution No. 733-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 733-05 : "Authorizing the Mayor to enter into a contract with BBL Carlton, LLC, in an amount up to $2,986,000, for Baseball Stadium Bid Package CI.3C – 601 Morris Street Build Out."

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 BBL Carlton, LLC, in an amount up to Two Million Nine Hundred Eighty-six Thousand Dollars ($2,986,000),

for Baseball Stadium Bid Package CI.3C – 601 Morris Street Build Out.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 733-05, adopted.

6. Your Committee on Finance has had under consideration Resolution No. 734-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 734-05: "Authorizing the Mayor to enter into a contract with Schoolfield Harvey Electric Company, in an amount up to $418,800, for Baseball Stadium Bid Package CI.3C – 601 Morris Street Build Out – MEP/F Systems (Electrical)."

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 Schoolfield Harvey Electric Company, in an amount up to Four Hundred Eighteen Thousand Eight Hundred Dollars ($418,800), for Baseball Stadium Bid Package CI.3C – 601 Morris Street Build Out – MEP/F Systems (Electrical).

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 734-05, adopted.

7. Your Committee on Finance has had under consideration Resolution No. 735-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 735-05: "Authorizing the Mayor to enter into a contract with Rock Branch Mechanical, Inc., in an amount up to $636,000, for Baseball Stadium Bid Package CI.3C – 601 Morris Street Build Out-MEP/F Systems (Plumbing)."

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 Rock Branch Mechanical, Inc., in an amount up to Six Hundred Thirty-six Thousand Dollars ($636,000), for Baseball Stadium Bid Package CI.3C – 601 Morris Street Build Out—MEP/F Systems (Plumbing).

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 735-05, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 736-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 736-05 : "Authorizing the Mayor to enter into a contract with Rock Branch Mechanical, Inc., in an amount up to $505,000, for Baseball Stadium Bid Package CI.3C – 601 Morris Street Build Out—MEP/F Systems (Mechanical)."

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 Rock Branch Mechanical, Inc., in an amount up to Five Hundred Five Thousand Dollars ($505,000), for Baseball Stadium Bid Package CI.3C – 601 Morris Street Build Out – MEP/F Systems (Mechanical).

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 736-05, adopted.

9. Your Committee on Finance has had under consideration Resolution No. 737-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 737-05 : "Authorizing the Mayor to enter into a contract with Brewer and Company of West Virginia, Inc., in an amount up to $98,100, for Baseball Stadium Bid Package CI.3C – 601 Morris Street Build Out – MEP/F Systems (Fire Systems)."

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 Brewer and Company of West Virginia, Inc., in an amount up to Ninety-eight Thousand One Hundred Dollars ($98,100), for Baseball Stadium Bid Package CI.3C – 601 Morris Street Build Out – MEP/F Systems (Fire Systems).

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 737-05, adopted.

10. Your Committee on Finance has had under consideration Resolution No. 738-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 738-05 : "Authorizing the Mayor to sign Change Order No. 13 with BBL Carlton, in the amount of $1,218.90, for Baseball Stadium Bid Package CI.2A/Seating Bowl, relating to changes made in door hardware."

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. 13 with BBL Carlton, in the amount of One Thousand Two Hundred Eighteen Dollars and Ninety Cents ($1,218.90), for Baseball Stadium Bid Package CI.2A/Seating Bowl, relating to changes made in door hardware.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 738-05, adopted.

11. Your Committee on Finance has had under consideration Resolution No. 739-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 739-05: "Authorizing the Mayor to sign Change Order No. 14 with BBL Carlton, in the amount of $31,868.10, for Baseball Stadium Bid Package CI.2A/Seating Bowl, relating to changes in hand railing and signage light pole foundations."

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. 14 with BBL Carlton, in the amount of Thirty-one Thousand Eight Hundred Sixty-eight Dollars and Ten Cents ($31,868.10), for Baseball Stadium Bid Package CI.2A/Seating Bowl, relating to changes in hand railing and signage light pole foundations.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 739-05, adopted.

12. Your Committee on Finance has had under consideration Resolution No. 740-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 740-05: "Authorizing the Mayor to sign Change Order No. 15 with BBL Carlton, in the amount of $7,810, for Baseball Stadium Bid Package CI.2A/Seating Bowl, relating to installation of additional area drains."

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. 15 with BBL Carlton, in the amount of Seven Thousand Eight Hundred Ten Dollars ($7,810), for Baseball Stadium Bid Package CI.2A/Seating Bowl, relating to installation of additional area drains.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 740-05, adopted.

13. Your Committee on Finance has had under consideration Resolution No. 741-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 741-05: "Authorizing the Mayor to sign Change Order No. 16 with BBL Carlton, in an amount up to $7,660.40, for Baseball Stadium Bid Package CI.2A/Seating Bowl, relating to additional labor and materials to add conduit around field for scoreboard controls."

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. 16 with BBL Carlton, in an amount up to Seven Thousand Six Hundred Sixty Dollars and Forty Cents ($7,660.40), for Baseball Stadium Bid Package CI.2A/Seting Bowl, relating to additional labor and materials to add conduit around field for scoreboard controls.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 741-05, adopted.

14. Your Committee on Finance has had under consideration Resolution No. 742-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 742-05 : "Authorizing the Mayor to sign Change Order No. 17 with BBL Carlton, in an amount up to $11,930.60, for Baseball Stadium Bid Package CI.2A/Seating Bowl, relating to installation of additional underground conduit for sound system."

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. 17 with BBL Carlton, in an amount up to Eleven Thousand Nine Hundred Thirty Dollars and Sixty Cents ($11,930.60), for Baseball Stadium Bid Package CI.2A/Seating Bowl, relating to installation of additional underground conduit for sound system.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 742-05, adopted.

15. Your Committee on Finance has had under consideration Resolution No. 743-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 743-05 : "Authorizing the Mayor to sign Change Order No. 4 with BBL Carlton, in the amount of $23,647.83, for Baseball Stadium Bid Package CI.2B/Concourse, relating to underslab vent system."

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. 4 with BBL Carlton, in the amount of Twenty-three Thousand Six Hundred forty-seven Dollars and Eighty-three Cents ($23,647.83), for Baseball stadium Bid Package CI.2B/Concourse, relating to underslab vent system.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 743-05, adopted.

16. Your Committee on Finance has had under consideration Resolution No. 744-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 744-05 : "Authorizing the Mayor to sign Change Order No. 5 with BBL Carlton, in the amount of $89,813.05, for Baseball Stadium Bid Package CI.2B/Concourse, relating to the extension of the third base building for storage area."

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 BBL Carlton, in the amount of Eighty-nine Thousand Eight Hundred Thirteen Dollars and Five Cents ($89,813.05), for Baseball Stadium Bid Package CI.2B/Concourse, relating to the extension of the third base building for storage area.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 744-05, adopted.

17. Your Committee on Finance has had under consideration Resolution No. 745-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 745-05 : "Authorizing the Mayor to sign Change Order No. 6 with BBL Carlton, in the amount of $75,171.88, for Baseball Stadium Bid Package CI.2B/Concourse, relating to additional costs for increasing the height of the retaining wall on Brooks Street."

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. 6 with BBL Carlton, in the amount of Seventy-five Thousand One Hundred Seventy-one Dollars and Eighty-eight Cents ($75,171.88), for Baseball Stadium Bid Package CI.2B/Concourse, relating to additional costs for increasing the height of the retaining wall on Brooks Street.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 745-05, adopted.

18. Your Committee on Finance has had under consideration Resolution No. 746-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 746-05 : "Authorizing the Mayor to sign Change Order No. 4 with Dougherty Co., in the amount of $14,296.54, for Baseball Stadium Bid Package CI.2D/HVAC and Plumbing, relating to additional costs for revised food service drawings."

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. 4 with Dougherty Co., in the amount of Fourteen Thousand Two Hundred Ninety-six Dollars and Fifty-four Cents ($14,296.54), for Baseball Stadium Bid Package CI.2D/HVAC and Plumbing, relating to additional costs for revised food service drawings.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 746-05, adopted.

19. Your Committee on Finance has had under consideration a proposal submitted by Country Club Chrysler, in the amount of $21,189, for purchase of one (1) Dodge Durango ST vehicle with police package to be used by the Charleston Fire Department. To be charged to Account No. 001-976-00-706-4-461, Fire – Capital Outlay, Lease/Purchase, and reports the same to Council with the recommendation that he 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.

20. Your Committee on Finance has had under consideration a proposal submitted by Stephens Auto Center, in the amount of $24,420, for purchase of one (1) 2005 Ford E350 Econoline Van to be used by the Charleston Fire Department. To be charged to Account No. 001-976-00-706-4-461, Fire – Capital Outlay, Lease/Purchase, and reports the same to Council with the recommendation that he 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.

21. Your Committee on Finance has had under consideration a bid submitted by Stephens Auto Center, in the amount of $19,929, for one (1) 4x4 2005 Jeep Grand Cherokee to be used by the Engineering Department. To be charged to Account No. 001-975-00-420-4-461, Engineering, Capital Outlay—Lease/Purchase, and reports the same to Council with the recommendation that he 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.

22. Your Committee on Finance has had under consideration a proposal submitted by Evenflo, Inc., in the amount of $14,983.15, for purchase of 351 child safety seats in assorted sizes for distribution throughout the State of West Virginia under the Child Passenger Safety Program. To be charged to Account No. 095-165-03-000-0-238, Police Grant – Child Passenger Safety Program, and reports the same to Council with the recommendation that he 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.

23. Your Committee of Finance has had under consideration Bill No. 7113, and reports the same to Council with the recommendation that the bill do pass.

A Bill closing, abandoning and discontinuing as public streets and alleys, that portion of 33rd Street extending from MacCorkle Avenue north to Staunton Avenue, that portion of Noyes Avenue extending from 33rd Street to a point 126.07 feet eastward, that portion of the alley located in Block 18 as shown on the Revised Map of Kanawha City between MacCorkle Avenue and Noyes Avenue extending from 33rd Street to a point 119.76 feet eastward, and that portion of the alley located in Block 19 as shown on the Revised Map of Kanawha City between Noyes Avenue and Staunton Avenue extending from 33rd Street to a point 126.95 feet eastward, together with all easements for storm and sanitary sewer therein.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA THAT;

1. 33rd Street, extending from MacCorkle Avenue north to Staunton Avenue, Noyes Avenue extending from 33rd Street to a point 126.07 feet eastward, and those two 16-foot alleys in Blocks 18 and 19 between MacCorkle Avenue and Staunton Avenue extending from 33rd Street eastward as shown on the Revised Map of Kanawha City recorded in the office of the County Commission of Kanawha County, West Virginia, in Map Book 2, at Pages 148 and 149, together with all easements for storm and sanitary sewer therein, as shown on a map attached hereto, is hereby closed, abandoned and discontinued, being more particularly described as:

> Beginning at the intersection of the existing northerly right of way line of MacCorkle Avenue (WV Route 61) with the existing westerly right of way line of Thirty-Third Street, S.E. (formerly known as Third Street), said point being located at the southeasterly corner of Lot 16 of Block 14 of the Revised Map of Kanawha City, as recorded in the Office of the Clerk of the County Commission of Kanawha County in Map Book 2, at Pages 148 and 149; thence leaving MacCorkle Avenue and with the existing westerly right of way line of Thirty-Third Street, S.E., N.05°37'20"E. 596.00 feet to the northeasterly corner of Lot 8 of Block 13 of the Revised Map of Kanawha City; thence crossing the existing right of way of Thirty-Third Street, S.E., S.84°22'40"E. 60.00 feet to the intersection of the existing easterly right of way line of Thirty-Third Street, S.E. with the existing southerly right of way line of Staunton Avenue, S.E. (formerly known as Ohio Avenue), said point being located at the northwesterly corner of Lot 1 of Block 19 of the Revised Map of Kanawha City; thence leaving Staunton Avenue, S.E. and with the existing easterly right of way line of Thirty-Third Street, S.E., S.05°37'20"W. 120.00 to the existing northerly right of way line of a sixteen foot wide alley, said point being located at the southwesterly corner of said Lot 1 of Block 19 of the Revised Map of Kanawha City; thence leaving said

existing right of way line of Thirty-Third Street, S.E. and with the existing northerly right of way line of said alley, S.84°22'40"E. 126.95 feet to the proposed westerly right of way line of relocated Thirty-Third Street, S.E., said point being in the southerly line of Lot 3 of Block 19 of the Revised Map of Kanawha City; thence leaving Lot 3 of Block 19 and crossing the existing right of way of said alley, binding on the proposed westerly right of way line of relocated Thirty-Third Street, S.E., S.05°37'20"W. 16.00 feet to the existing southerly right of way line of said alley, said point being in the northerly line of Lot 11 of Block 19 of the Revised Map of Kanawha City; thence leaving the proposed westerly right of way line of relocated Thirty-Third Street, S.E. and with the existing northerly right of way line of said alley, N.84°22'40"W. 126.95 feet to the existing easterly right of way line of Thirty-Third Street, S.E., said point being located at the northwesterly corner of Lot 9 of Block 19 of the Revised Map of Kanawha City; thence leaving said alley and with the existing easterly right of way line of Thirty-Third Street, S.E., S.05°37'20"W. 120.00 feet to the existing northerly right of way line of Noyes Avenue, S.E. (formerly known as Kentucky Avenue), said point being located at the southwesterly corner of said Lot 9 of Block 19 of the Revised Map of Kanawha City; thence leaving the existing easterly right of way line of Thirty-Third Street, S.E. and with the existing northerly right of way line of Noyes Avenue, S.E., S.84°22'40"E. 126.07 feet to the proposed westerly right of way line of relocated Thirty-Third Street, S.E., said point being in the southerly line of Lot 11 of Block 19 of the Revised Map of Kanawha City; thence leaving Lot 11 of Block 19 and crossing the existing right of way of Noyes Avenue, S.E., binding on the proposed westerly right of way line of relocated Thirty-Third Street, S.E., S.10°11'46"W. 60.19 feet to the existing southerly right of way line of Noyes Avenue, S.E., said point being in the northerly line of Lot 3 of Block 18 of the Revised Map of Kanawha City; thence leaving the proposed westerly right of way line of relocated Thirty-Third Street, S.E. and with the existing southerly right of way line of Noyes Avenue, S.E., N.84°22'40"W. 121.27 feet to the existing easterly right of way line of Thirty-Third Street, S.E., said point being located at the northwesterly corner of Lot 1 of Block 19 of the Revised Map of Kanawha City; thence leaving Noyes Avenue, S.E. and with the existing easterly right of way line of Thirty-Third Street, S.E., S.05°37'20"W. 120.00 feet to the existing northerly right of way line of a sixteen foot wide alley, said point being located at the southwesterly corner of said Lot 1 of Block 19 of the Revised Map of Kanawha City; thence leaving the existing easterly right of way line of Thirty-Third Street, S.E. and with the existing northerly right of way line of said alley, S.84°22'40"E. 117.05 feet to the proposed westerly right of way line of relocated Thirty-Third Street, S.E., said point being in the southerly line of Lot 3 of Block 18 of the Revised Map of Kanawha City; thence leaving Lot 3 of Block 18 and crossing the existing right of way of said alley, binding on the proposed westerly right of way line of relocated Thirty-Third Street, S.E. on a curve to the left for a distance of 16.23 feet, said curve having a radius of 236.61 feet, the chord of which bears S.03°59'24"E. for a distance of 16.23 feet to the existing southerly right of way line of said alley, said point being in the northerly line of Lot 11 of

Block 18 of the Revised Map of Kanawha City; thence leaving the proposed westerly right of way line of relocated Thirty-Third Street, S.E. and with the existing northerly right of way line of said alley, N.84°22'40"W. 119.76 feet to the existing easterly right of way line of Thirty-Third Street, S.E., said point being located at the northwesterly corner of Lot 9 of Block 18 of the Revised Map of Kanawha City; thence leaving said alley and with the existing easterly right of way line of Thirty-Third Street, S.E., S.05°37'20"W. 144.00 feet to the existing northerly right of way line of MacCorkle Avenue, said point being located at the southwesterly corner of said Lot 9 of Block 18 of the Revised Map of Kanawha City; thence with the existing northerly right of way line of MacCorkle Avenue, N.84°22'40"W. 60.00 feet to the place of beginning, containing 1.08 acres, more or less.

2. The Mayor of the City of Charleston be, and is hereby authorized and directed to execute, acknowledge and deliver a proper deed conveying to Charleston Area Medical Center, Inc., a West Virginia nonprofit, nonstock corporation, all right, title and interest in and to said streets and alleys, in consideration and in exchange for the dedication to the City of Charleston by petitioner of that portion of petitioner's real estate containing approximately 1.09 acres for purposes of the relocation of 33rd Street and right-of-way, together with easements for storm and sanitary sewer, all as shown on a map attached hereto.

4. All ordinances, inconsistent with this ordinance are hereby repealed to the extent of the inconsistency.

The question being on the passage of the Bill a roll call was taken and there yeas-25, nays-0, absent-2, abstain – 1, as follows:
YEAS: Chestnut, Clowser, Deitzler, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Ealy, Nielsen.
ABSTAIN: Davis.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7113, passed.

24. Your Committee on Finance has had under consideration Bill No. 7123, and reports the same to council with the recommendation that the bill do pass.

Bill No. 7123 - A Bill authorizing the refunding of the Parking System Refunding Revenue Bonds, Series 1993, the Parking System Revenue Bonds, Series 1994 A, the Parking System Subordinate Revenue Bonds, Series 1994 B and the Parking System Subordinate Revenue Bonds, Series 1995 A if The City of Charleston; authorizing the issuance of not more than 3,500,000 in Parking System Bond Anticipation Notes; authorizing the issuance of not more than $12,885,000 in aggregate principal amount of Parking System Refunding Revenue Bonds, Series

2005 A and Series 2005 B, 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 finance the cost of such refunding, to fund reserve accounts 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.

The question being on the passage of the Bill a roll call was taken and there yeas-24, nays-0, absent-2, abstain – 2, as follows:
YEAS: Chestnut, Clowser, Deitzler, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Reed, Reishman, Robertson, Sadd, Talkington, Ware, White, Mayor Jones.
NAYS:
ABSENT: Ealy, Nielsen.
ABSTAIN: Loeb, Weintraub.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7123, passed.

25. Your Committee on Finance has had under consideration a Payment of an invoice from Charleston Newspapers, in the amount of $27,874.60, publication of City's Financial Statement in The Charleston Gazette and the Charleston Daily Mail on December 20, 2004. 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 he 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.

## REPORTS OF OFFICERS

1. Report of the City of Charleston, Municipal Court Financial Statements; December, 2004. Received and Filed.

## NEW BILLS INTRODUCED

Introduced by Councilman John Miller, January 18, 2005:
Bill No. 7124, a bill to establish a vehicular parking zone for the exclusive use of the physically disabled on the southerly side of Venable Avenue from a point 25 feet west of 46th Street to a point 69 feet west of 46th 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 16, and amending 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, to conform therewith.
Refer to Council Committee on Streets and Traffic.

Introduced by Councilman James Ealy, January 18, 2005;
Bill No. 7125, a bill to establish a Two Hour Parking Tow-away zone on the southerly side of West Washington Street from Patrick Street to Bream Street and amending 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, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.
Refer to Council Committee on Streets and Traffic.

**ROLL CALL**

The Clerk called the roll and the following members were in attendance:

YEAS: Chestnut, Clowser, Davis, Deitzler, Hall, Hanna, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Reed, Reishman Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
ABSENT: Ealy, Nielsen.

At 8:10 p.m., on motion of Councilman Loeb, Council adjourned until Monday, February 7, 2005, at 7:00 p.m.

Danny Jones, Honorable Mayor

James M. Reishman, City Clerk

# *JOURNAL*

# OF THE

# *COUNCIL*

# CITY OF CHARLESTON

# WEST VIRGINIA

## February 7, 2005

**THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF FEBRUARY ON THE 7th DAY, IN THE YEAR 2005, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED HARRY DEITZLER, AND THE PLEDGE OF ALLEGIANCE WAS LED BY TERESA REED.**

**THE CLERK CALLED THE ROLL AND THE FOLLOWING MEMBERS ANSWERED TO THEIR NAMES:**

| | | |
|---|---|---|
| CHESTNUT | CLOWSER | DEITZLER |
| | EALY | HALL |
| | HARRIS | HARRISON |
| HIGGINS | JONES | LANE |
| LANHAM | LOEB | MORTON |
| MILLER | MONROE | MARKHAM |
| NIELSEN | REED | REISHMAN |
| ROBERTSON | SADD | TALKINGTON |
| WARE | WEINTRAUB | WHITE |
| MAYOR JONES | | |

**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.**

**FEBRUARY 7, 2005, FIRST MEETING**

**PUBLIC SPEAKERS**

1. NONE.

# CLAIMS

1. A claim of James Spencer, 228 Baker Lane, Charleston, WV; alleges damage to vehicle.
Refer to City Solicitor.

2. A claim of Alex and Kimberly Lawrence, 2100 Kanawha Ave. SE., Charleston, WV; alleges damage to property.
Refer to City Solicitor.

3. A claim of Naomi Ingram, 404 Russell St., Charleston, WV; alleges damage to property.
Refer to City Solicitor.

**1.** A claim of Mary Warp, 2418 McKinley Ave., St. Albans, WV; alleges personal injury.
Refer to City Solicitor.

5. A claim of Shelby Davis, 209 Rhone Street., Charleston, WV; alleges damage to property.
Refer to City Solicitor.

**COMMUNICATIONS**

The Mayor read the following Public Hearing:

After duly being published as required, I now declare the floor open for a Public Hearing on Resolution No. 765-05, a Resolution supplementing Ordinance No. 7123, passed by Council on January 18, 2005, for Parking System Refunding Revenue Bonds, providing for matters relating to the Notes and the Series 2005 Bonds not set forth in the Ordinance to be approved by the supplemental resolution for the issuance of not more than $2,885,000 in Parking System Bond Anticipation Notes; and not more than $12,885,000 in aggregate principal amount of Parking System Refunding Revenue Bonds, Series 2005 A and Series 2005 B.

There being no one from the Public to speak the Mayor declared the Public Hearing on Resolution No. 765-05 Closed.

The Mayor read the following Public Hearing:

After duly being published as required, I now declare the floor open for a Public Hearing on Resolution No. 760-05, ratifying, approving and confirming resolutions, approved by Council on September 7, 2004 and January 18, 2005, authorizing issuance of Multifamily Housing Revenue Bonds for the Vista View Apartments Housing Project, and authorizing the Mayor to sign Resolution No. 760-05, confirming that all requirements have been met in respect to issuance of the bonds.

There being no one from the Public to speak the Mayor declared the Public Hearing on Resolution No. 760-05 Closed.

The Clerk read the following appointments.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Thomas Bird, Charleston Town Center Mall, 3000 Charleston Town Center, Charleston, WV 25389, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2006.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Greg Bolles, Residence Inn, 200 Hotel Circle, Northgate Business Park, Charleston, WV 25311, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2008.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Gary Chernenko, 1616 Autumn Road, Charleston, WV 25314, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2008.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Mary Jean Davis, Charleston City Council, 1527 Dogwood Road, Charleston, WV 25311, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2007.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Richard Eaton, Holiday Inn Charleston House, Kanawha Boulevard, East, Charleston, WV 25301, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2007.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Sen. Dan Foster, Room 223-W, Building 1, 1900 Kanawha Boulevard, East, Charleston, WV 25305, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2007.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Georgette George, Ramada Plaza Hotel, 400 2nd Avenue, South Charleston, WV 25303, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2006.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Ted Lawson, National Travel Service, 100 Bank One Plaza, Charleston, WV 25301, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2007.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Steve Lemmerman, Charleston Marriott Hotel, 200 Lee Street, Charleston, WV 25301, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2008.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Drew Payne, Charleston Civic Center Board of Directors, 300 Capitol Street, Suite 1503, Charleston, WV 25301, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2006.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Peggy Pope, 406 Abbey Drive, Charleston, WV 25314, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2006.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Teresa Reed, Charleston City Council, 1207 Park Avenue, Charleston, WV 25314, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2007.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Steve Summer, West Virginia Hospital Association, 100 Association Drive, Charleston, WV 25311, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2008.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

To: James Reishman
City Clerk

From: Danny Jones
Mayor

Re: Charleston Convention and Visitors Bureau Board

Date: February 7, 2005

I recommend that Tom Susman, 122 Capital Street, Charleston, WV 25311, be appointed to the Charleston Convention and Visitors Bureau Board, with an initial term to expire February 7, 2006.

I respectfully request that you forward this information to the City Council.

Council approved the appointment.

## MISCELLANEOUS RESOLUTIONS

NONE.

## REPORTS OF STANDING COMMITTES

### *FINANCE*

Councilman Robert Reishman, Chairman of the Council Committee on Finance, submitted the following reports.

1. Your Committee on Finance has had under consideration Resolution No. 747-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 747-05 : "Authorizing the Mayor to sign a grant request in the amount of $65,014.50 to be submitted to the West Virginia Department of Highways Recreational Trails Program for construction of the Cato Park Trail."

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

That the Mayor is hereby authorized and directed to sign a grant request in the amount of Sixty-five Thousand Fourteen Dollars and Fifty Cents ($65,014.50) to be submitted to the West Virginia Department of Highways Recreational Trails Program for construction of the Cato Park Trail.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 747-05, adopted.

2. Your Committee on Finance has had under consideration Resolution No. 748-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 748-05: "Authorizing the Mayor to enter into a contract with Gabriel, Roeder, Smith & Company, in the amount of $12,000, to conduct an Actuarial Valuation of the City's Health Plan for Other Post Employment Benefits (OPEB) other than pension benefits in accordance with Actuarial Standards of Practice (ASOP) and Governmental Accounting Standards Board Statements Nos. 43 and 45."

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 Gabriel, Roeder, Smith & Company, in the amount of Twelve Thousand Dollars ($12,000), to conduct an Actuarial Valuation of the City's Health Plan for Other Post Employment Benefits other than pension benefits in accordance with Actuarial Standards of Practice (ASOP) and Governmental Accounting Standards Board Statements Nos. 43 and 45.

The ASOP will become effective for the City in December 2007 and must be implemented for fiscal year ended June 30, 2008; however, the Governmental Accounting Standards Board recommends earlier implementation. The City will be required to have an actuarial valuation every two years under these standards.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 748-05, adopted.

3. Your Committee on Finance has had under consideration Resolution No. 749-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 749-05: "Authorizing the Mayor to enter into a contract with Smith, Cochran & Hicks, PLLC, in an amount not to exceed $4,275, for an Agreed Upon Procedures Engagement for the Solid Waste Facility, operated by Landfill Services of Charleston, Inc., for the calendar year ended 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 with Smith, Cochran & Hicks, PLLC, in an amount not to exceed Four Thousand Two Hundred Seventy-five Dollars ($4,275), for an Agreed Upon Procedures Engagement for the Solid Waste Facility, operated by Landfill Services of Charleston, Inc., for the calendar year ended 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. 749-05, adopted.

4. Your Committee on Finance has had under consideration Resolution No. 750-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 750-05: "Authorizing the Mayor to enter into a contract with Jimmy A. Dunn Excavating Company, in the amount of $349,884, for the Morris / Smith Streets Parking Lot 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 Jimmy A. Dunn Excavating Company, in the amount of Three Hundred Forty-nine Thousand Eight Hundred Eighty-four Dollars ($349,884), for the Morris / Smith Streets Parking Lot Project.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 750-05, adopted.

5. Your Committee on Finance has had under consideration Resolution No. 751-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 751-05: "Authorizing the Mayor to enter into a contract with Oval Construction Management, LLC, in the amount of $213,200, for the Kanawha Boulevard Retaining Wall / Sidewalk Replacement 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 Oval Construction Management, LLC, in the amount of Two Hundred Thirteen Thousand Two Hundred Dollars ($213,200), for the Kanawha Boulevard Retaining Wall / Sidewalk Replacement Project.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 751-05, adopted.

6. Your Committee on Finance has had under consideration Resolution No. 752-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 752-05: "Authorizing the Mayor to enter into a contract with B.B.R. Drilling Company, in the amount of $198,798, for the Market 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 One Hundred Ninety-eight Thousand Seven Hundred Ninety-eight

Dollars ($198,798), for the Market 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. 752-05, adopted.

7. Your Committee on Finance has had under consideration Resolution No. 753-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 753-05: "Authorizing the Mayor to sign an Agreement with B.B.R. Drilling Company, in the amount of $68,300, for the emergency repair of a slip on Hanshaw Drive."

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

That the Mayor is hereby authorized and directed to sign an Agreement with B.B.R. Drilling Company, in the amount of Sixty-eight Thousand Three Hundred Dollars ($68,300), for the emergency repair of a slip on Hanshaw Drive.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 753-05, adopted.

8. Your Committee on Finance has had under consideration Resolution No. 754-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 754-05: "Authorizing the Mayor to sign a grant agreement with the West Virginia Department of Transportation, Division of Motor Vehicles, for receipt of $15,491 in funding under the fiscal year 2004-2005 to continue the West Virginia Child Passenger Safety Program. The funding will be used for the coordinator's salary and to provide travel and training for the Child Passenger Safety Courses being offered statewide."

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

That the Mayor is hereby authorized and directed to sign a grant agreement with the West Virginia Department of Transportation, Division of Motor Vehicles, for receipt of Fifteen Thousand Four Hundred Ninety-one Dollars ($15,491) in funding under the fiscal year 2004-2005 to continue the West Virginia Child Passenger Safety Program. The funding will be used for the coordinator's salary and to provide travel and training for the Child Passenger Safety Courses being offered statewide.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 754-05, adopted.

9. Your Committee on Finance has had under consideration Resolution No. 755-05, and

reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 755-05: "Authorizing the Mayor to sign a grant agreement with the West Virginia Department of Transportation, Division of Motor Vehicles, for receipt of $59,110 in funding for fiscal year 2004-2005 for the South Central Highway Safety Safe Community Program. The funding will be used for the coordinator's salary, to provide overtime funding for DUI, occupant protection enforcement and educational programs in the four county area (Kanawha, Clay, Boone, and Logan counties)."

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

That the Mayor is hereby authorized and directed to sign a grant agreement with the West Virginia Department of Transportation, Division of Motor Vehicles, for receipt of Fifty-nine Thousand One Hundred Ten Dollars ($59,110) in funding for fiscal year 2004-2005 for the South Central Highway Safety Safe Community Program. The funding will be used for the coordinator's salary, to provide overtime funding for DUI, occupant protection enforcement and educational programs in the four county area (Kanawha, Clay, Boone, and Logan counties).

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 755-05, adopted.

10. Your Committee on Finance has had under consideration Resolution No. 756-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 756-05: "Authorizing the Mayor to enter into an Agreement with the Charleston Sanitary Board, in the amount of $35,899.35, to extend the sewer line on Lewis Street, west of Morris Street, approximately 430 feet."

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 Charleston Sanitary Board, in the amount of Thirty-five Thousand Eight Hundred Ninety-nine Dollars and Thirty-five Cents ($35,899.35), to extend the sewer line on Lewis Street, west of Morris Street, approximately 430 feet.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 756-05, adopted.

11. Your Committee on Finance has had under consideration Resolution No. 757-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 757-05: "Authorizing the Finance Director to make revisions to the 2004-2005 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 2004-2005 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-2, as follows:
YEAS: Chestnut, Clowser, Deitzler, Ealy, Hall, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Davis, Hanna.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 757-05, adopted.

12. Your Committee on Finance has had under consideration Resolution No. 758-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 758-05: "Authorizing the Mayor to enter into an Agreement of License with Ridge Line, Inc. to occupy and use, subject to all terms and conditions in the Agreement, all of Lot No. 11 at the Southridge Centre, located within the City of Charleston. The property will be used solely as a temporary soccer field for citizens of Charleston, South Charleston and the surrounding area. The sum for use of the property shall be $1.00, payable at the time of execution of the Agreement. The Agreement may be terminated by either party by giving a two-week notice."

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 of License with Ridge Line, Inc. to occupy and use, subject to all terms and conditions in the Agreement, all of Lot No. 11 at the Southridge Centre, located within the City of Charleston. The property will be used solely as a temporary soccer field for citizens of Charleston, South Charleston and the surrounding area. The sum for use of the property shall be One Dollar ($1.00), payable at the time of execution of the Agreement. The Agreement may be terminated by either party by giving a two-week notice.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 758-05, adopted. Abstain: Higgins.

13. Your Committee on Finance has had under consideration Resolution No. 759-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 759-05 : "Authorizing the Mayor to sign and submit fiscal year 2005 Budget Digest Grant application and all other related documents for the Kanawha Hospice House, located in the City of Charleston, in the amount of $10,000."

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 fiscal year 2005 Budget Digest Grant application and all other related documents for the Kanawha Hospice House, located in the City of Charleston, in the amount of Ten Thousand Dollars ($10,000).

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 759-05, adopted.

14. Your Committee on Finance has had under consideration Resolution No. 760-05, and reports the same to Council with the recommendation that the committee report be adopted.

WHEREAS, the City of Charleston, West Virginia (the "Issuer"), a municipal corporation, is a duly organized governmental body created by the Constitution of the State of West Virginia (the "State"), is validly existing and in good standing under the Constitution and laws of the State, is a political subdivision thereof, and is authorized by the Industrial Development and Commercial Development Bond Act, Chapter 13, Article 2C, of the Code of West Virginia of 1931, as amended (the "Act"), in furtherance of the public purposes as Section 2 of the Act, to issue its revenue bonds to pay the cost of commercial projects; and

WHEREAS, Vista View Apartments L.P., a West Virginia limited partnership (the "Company") has previously requested the Issuer to issue its Multifamily Housing Revenue Bonds (Vista View Apartments Project), Series 2004 in the principal amount of not to exceed $17,500,000 in the aggregate, in one or more series (the "Bonds Originally Authorized"), the proceeds of which will be used to finance (i) the acquisition, construction and equipping by the Company of a commercial project in the City of Charleston, West Virginia, specifically consisting of (i) the acquisition of the real and personal property currently known as the "Spring Hill Apartment," comprised of one, two, and three bedroom apartments, and four bedroom townhouse apartments in 16 separate buildings located at 1300-1385 Roseberry Circle, Charleston, West Virginia (the "Existing Facilities"), and (ii) the construction and equipping of renovations and improvements to the Existing Facilities ((i) and (ii) hereinafter referred to as the "Project"); and (iii) costs associated with the issuance of the Bonds Originally Authorized; and

WHEREAS, on September 7, 2004, the Issuer approved a resolution (the "Original Resolution") authorizing the issuance of its Multifamily Housing Revenue Bonds (Vista View Apartments Project), in the principal amount of not to exceed $10,000,000 and on January 18, 2005, the Issuer approved a resolution (the "2005 Resolution," and, together with the Original Resolution, herein collectively referred to as the "Resolution"), authorizing

the issuance of up to an additional $7,500,000 of its Multifamily Housing Revenue Bonds (Vista View Apartments Project) (collectively, the "Bonds") ; and

WHEREAS, the Internal Revenue Code of 1986, as amended, requires that prior to the issuance of the Bonds, a public notice in the form as that attached hereto as Exhibit A and incorporated by reference herein (the "Notice") be published in a newspaper of general circulation in the City of Charleston, West Virginia, and such publication was undertaken in the Charleston Gazette, a newspaper of general circulation in the City of Charleston, West Virginia, on January 21, 2005 and January 28, 2005; and

WHEREAS, at 7:00 p.m., prevailing time, on Monday, February 7, 2005, in the Council Chambers, Charleston, West Virginia, in accordance with the Notice, City Council met for the purpose of hearing protests and suggestions regarding the Project, as defined in the Resolution; and

WHEREAS, at the public hearing, no significant reasons and no written protest with regard thereto were presented concerning the Project ands the proposed issuance of the Bonds that would require other modification or amendment of the Resolution; and

WHEREAS, the Issuer has determined that the issuance of the Bonds will benefit the citizens of the City of Charleston, West Virginia and is in furtherance of the public purposes as Section 2 of the Act, and that ratification, confirmation and approval of the Resolution previously adopted would be appropriate.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Charleston,, West Virginia that:

Section 1. The Resolution be and is hereby ratified, approved and confirmed in all respects.

Section 2. That the members of the City Council of the Issuer hereby find and determine that all formal actions relative to the adoption of this Resolution were taken in an open meeting of the Issuer and that all deliberations of the members of the Issuer which resulted in formal action were taken in meetings open to the public, in full compliance with applicable legal requirements

Section 3. That this Resolution shall become effective immediately upon its adoption.

Adopted by the City of Charleston, West Virginia, a municipal corporation, at a meeting held in Charleston, West Virginia, on the 7th day of February, 2005.

(SEAL) By: _____
Mayor

Attest:

By: _____
City Clerk

CERTIFICATION

The undersigned, being the duly appointed and qualified acting City Clerk of the City of Charleston,, West Virginia does hereby certify that the foregoing Resolution was duly adopted by the Issuer at its meeting held on February 7, 2005, a quorum being present and acting throughout, and is a true, correct and complete copy as witness my hand and the Seal of the City of Charleston West Virginia this 7th day of February, 2005.

_____
City Clerk

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-25, nays-0, absent-2, abstain-1, as follows:
YEAS: Chestnut, Clowser, Deitzler, Ealy, Hall, Harris, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Davis, Hanna.
ABSTAIN: Harrison

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 760-05, adopted.

15. Your Committee on Finance has had under consideration Resolution No. 763-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 763-05 : "Authorizing the Mayor to sign the application for an $80,000 request to the West Virginia Department of Highways for Recreational Trails funds. The total recreational portion of the project is $100,000. These funds will be used to construct an asphalt trail connecting the Kanawha Boulevard Riverfront Trail to the northern end of the CSX landing near Sixth Street."

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

That the Mayor is hereby authorized and directed to sign the application for an Eighty Thousand Dollar ($80,000) request to the West Virginia Department of Highways for Recreational Trails funds. The total recreational portion of the project is $100,000. These funds will be used to

construct an asphalt trail connecting the Kanawha Boulevard Riverfront Trail to the northern end of the CSX landing near Sixth Street.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-26, nays-0, absent-2, as follows:
YEAS: Chestnut, Clowser, Deitzler, Ealy, Hall, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Davis, Hanna.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 763-05, adopted.

16. Your Committee on Finance has had under consideration Resolution No. 764-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 764-05: "Authorizing the Mayor to sign the application for an $80,000 grant request to the West Virginia Department of Highways Recreational Trails Program. The funds will be used to construct an asphalt trail connecting the Kanawha Boulevard Riverfront to the northern end of the CSX landing near Sixth Street. The total recreational portion of the project is $100,000."

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

That the Mayor is hereby authorized and directed to sign the application for an Eighty Thousand Dollar ($80,000) grant request to the West Virginia Department of Highways Recreational Trails Program. The funds will be used to construct an asphalt trail connecting the Kanawha Boulevard Riverfront to the northern end of the CSX landing near Sixth Street. The total recreational portion of the project is $100,000.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 764-05, adopted.

17. Your Committee on Finance has had under consideration Resolution No. 765-05, and reports the same to Council with the recommendation that the committee report be adopted.

A resolution supplementing Ordinance No. 7123 passed by the Council of The City of Charleston on January 18, 2005, authorizing the refunding of the Parking System Refunding Revenue Bonds, Series 1993, the Parking System Revenue Bonds, Series 1994 A, the Parking System Subordinate Revenue Bonds, Series 1994 B and the Parking System Subordinate Revenue Bonds, Series 1995 A of The City of Charleston; authorizing the issuance of not more than $2,885,000 in Parking System Bond Anticipation Notes; authorizing the issuance of not more than $12,885,000 in aggregate principal amount of Parking System Refunding Revenue

Bonds, Series 2005 A and Series 2005 B, 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 finance the cost of such refunding, to fund reserve accounts 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" or the "Issuer"), on January 18, 2005, adopted Ordinance No. 7123, which Ordinance authorized the issuance of The City of Charleston Parking System Bond Anticipation Notes (the "Notes"), The City of Charleston (West Virginia) Parking System Refunding Revenue Bonds, Series 2005 A (the "Series 2005 A Bonds") and Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds" and collectively, the "Series 2005 Bonds"), in an aggregate principal amount not to exceed $12,885,000, to finance the cost of refunding the Parking System Refunding Revenue Bonds, Series 1993 and the Parking System Revenue Bonds, Series 1994 A, the Parking System Subordinate Revenue Bonds, Series 1994 B and the Parking System Subordinate Revenue Bonds, Series 1995 A, (collectively, the "Series 1994/1995 Bonds"), to fund reserve accounts for the Series 2005 Bonds and to pay other costs in connection therewith, 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 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 Issuer contemplates the issuance of the Notes and the Series 2005 Bonds 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 once a week for two successive weeks, with at least six full days intervening between each publication in the Charleston Gazette and Charleston Daily Mail, two qualified newspapers published and of general circulation in the City of Charleston, West Virginia, 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 interest persons may appear before the City Council and present protests;

WHEREAS, the Abstract and Notice was published on January 28, 2005 and February 4, 2005;

WHEREAS, the Notice provided for a public hearing to be held before City Council at 7:00 p.m. on Monday, February 7, 2005, in the Council Chambers, City Hall, Charleston, West Virginia, which hearing was held and no protests were received;

WHEREAS, the Ordinance provides that matters relating to the Notes and the

Series 2005 Bonds not set forth in the Ordinance shall be approved by a resolution supplemental thereto (the "Supplemental Resolution");

WHEREAS, the Notes and the Bonds are proposed to be purchased by Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (the "Original Purchasers"), pursuant to two or more Bond/Note Purchase Agreements (the "Purchase Agreement") between the Original Purchasers and the City;

WHEREAS, this Council wishes to delegate to the Mayor the authority to approve, within the parameters set forth herein, the final terms of the Notes and the Series 2005 Bonds, including the exact principal amount, interest rates, redemption provisions, maturities, purchase price and other terms of the Notes and the Series 2005 Bonds as set forth in the form of the Certificate of Determination attached hereto, without the requirement of further official action by this Council; and

WHEREAS, this City Council deems it essential and desirable that this Supplemental Resolution be adopted, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Notes and Series 2005 B Bonds be fixed as stated herein, that the principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Notes and the Series 2005 A Bonds be fixed by the Mayor, by and through the execution of Certificates of Determination, within the parameters fixed 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:

1. It is hereby found and determined:

(a) The Abstract and Notice were duly published in the The Charleston Gazette and The Daily Mail, newspapers of general circulation in The City of Charleston, West Virginia, with the first publication thereof being on January 28, 2005, and with the last publication thereof being on February 4, 2005, and a copy of the affidavit of publication reflecting such publication is attached hereto and incorporated herein as EXHIBIT A;

(b) In accordance with the Ordinance and the Notice, a copy of the Ordinance was maintained at the Office of the City Clerk for review by interested persons during the regular office hours of such office;

(c) At 7:00 p.m., prevailing time, on Monday, February 7, 2005, in the Council Chambers, Charleston, West Virginia, in accordance with the Ordinance and the Notice, City 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 and no written protest with regard thereto were presented that would require other modification or amendment of the Ordinance; and

(e) That the Ordinance shall be put into effect as of the date hereof and the Notes and the Series 2005 Bonds contemplated thereby shall be issued, all as provided in the Ordinance and this Supplemental Resolution.

2. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the following bonds of the City:

(a) The City of Charleston Parking System Bond Anticipation Notes, in the original principal amount not to exceed $2,885,000. The Note shall be dated such date, shall finally mature on June 1, 2013, shall bear interest and prices with interest payable on such dates, and shall have such redemption provisions and other terms as shall be approved by the Mayor in the Certificate of Determination the form of which is attached hereto as EXHIBIT B.

(b) The City of Charleston Parking System Refunding Revenue Bonds, Series 2005 A shall be issued in such aggregate principal amount not to exceed $10,000,000, shall be dated such date, shall finally mature on June 1, 2016, shall bear interest and prices with interest payable on such dates, and shall have such redemption provisions and other terms as shall be approved by the Mayor in the Certificate of Determination the form of which is attached hereto as EXHIBIT B.

(c) The City of Charleston Parking System Refunding Revenue Bonds, Series 2005 B shall be issued in such aggregate principal amount not to exceed $2,885,000, shall be dated such date, shall finally mature on June 1, 2013, shall bear interest and prices with interest payable on such dates, and shall have such redemption provisions and other terms as shall be approved by the Mayor in the Certificate of Determination the form of which is attached hereto as EXHIBIT B.

3. The Mayor of The City of Charleston, West Virginia (the "Mayor") is hereby authorized and directed to set forth the exact principal amount, the maturities, the interest rates, the redemption provisions, the price, and other terms and details of the Notes, the Series 2005 A Bonds and the Series 2005 B Bonds, subject to the parameters set forth herein in the Certificate of Determination, substantially in the form attached hereto as EXHIBIT B and incorporated herein, to be executed and delivered in connection with the sale of the Notes, the Series 2005 A Bonds and the Series 2005 B Bonds. Assuming such parameters are met, the Certificate of Determination shall have full force and effect as if adopted as a part of this Supplemental Resolution.

4. All other provisions relating to the Notes and the Series 2005 Bonds and the text of the Notes and the Series 2005 Bonds shall be as provided in the Ordinance, and the Bonds shall be in substantially the form provided in EXHIBIT C attached hereto and incorporated herein, 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.

5. A Bond Purchase Agreement for the Notes, each series of Series 2005 Bonds, by and between the Original Purchasers and the Issuer, the form of which is attached hereto as EXHIBIT D and incorporated herein, and the execution and delivery by the Mayor thereof shall be and the same are hereby authorized, approved, and directed. The Mayor shall execute and deliver each Purchase Agreement for the Notes and each series of Series 2005 Bonds with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Purchase Agreement for the Notes and each series of Series 2005 Bonds by the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the Purchase Agreement relating to the issuance and sale of the Notes and each series of Series 2005 Bonds, including the payment of all necessary fees and expenses in connection therewith.

6. A Continuing Disclosure Certificate of the Issuer, for the Notes and each series of Series 2005 Bonds, to be dated as of the date of delivery of the respective Notes and series of Series 2005 Bonds, the form of which is attached hereto as EXHIBIT E and incorporated herein, and the execution and delivery by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Continuing Disclosure Certificate for each series of Bonds with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Continuing Disclosure Certificate for each series of Bonds by the Mayor shall be conclusive evidence of any approval required by this Section.

7. The Escrow Agreements by and between the Issuer and the West Virginia Municipal Bond Commission as Escrow Agent, to be dated as of the date of delivery of the Notes and the Series 2005 A Bonds, substantially in the form attached to the Certificate of Determination, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved and directed. The Mayor shall execute and deliver the Escrow Agreements with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Escrow Agreements by the Mayor shall be conclusive evidence of any approval required by this Section.

8. A Preliminary Official Statement and an Official Statement for the Notes and each series of Series 2005 Bonds, in substantially the form of the Preliminary Official Statement attached hereto as EXHIBIT F and incorporated herein (with such changes, insertions and omissions as may be necessary or advisable in the opinion of the Mayor), and the distribution of counterparts or copies thereof by the Original Purchasers are hereby approved. The Mayor shall execute and deliver the Official Statement for the Notes and Series 2005 Bonds with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Official Statement for the Notes, each series of Bonds by the Mayor shall be conclusive evidence of any approval required by this Section.

9. City Council hereby appoints and designates United Bank, Inc., Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds.

10. Upon redemption of the Series 1993 Bonds, all funds remaining on in the Series 1993 Bonds Escrow Account shall be transferred to the Note Reserve Account and upon redemption of the Series 1994/1995 Bonds, all funds remaining on in the Series 1994/1995 Bonds Escrow Account shall be transferred to the Series 2005 A Bonds Sinking Fund and applied to the next ensuing interest payment.

11. Upon exchange of the Notes for the Series 2005 B Bonds, all funds remaining in the Note Repayment Account, following the payment of interest on the Notes shall be transferred to the Series 2005 B Bonds Sinking Fund.

12. Simultaneous with the issuance of the Series 2005 A Bonds and the defeasance of the Series 1994/1995 Bonds, the sum of $1,000,000 shall be transferred from the Repair, Maintenance and Operations Fund established under the Prior Ordinance to the City, as payment for the acquisition of that certain parking lot, containing approximately 103 parking spaces, located at the intersection of the southwesterly line of Smith Street and the southeasterly line of Morris Street, containing 1.143 acres more or less ("Parking Lot A"), and that certain parking lot, containing approximately 161 parking spaces, located at the intersection of the southeasterly line of Morris Street and the northeasterly line of Smith Street, containing 1.171 acres more or less ("Parking Lot B").

13. Upon acquisition of Parking Lot A and Parking Lot B, as contemplated in Section 12 above, Parking Lot A and Parking Lot B shall be deemed and designated as Off-Street Parking Facilities within the Parking System.

14. Effective the delivery of the Series 2005 A Bonds and the defeasance of the Series 1994/1995 Bonds, the Repair, Maintenance and Operations Fund requirement shall be $200,000.

15. City Council hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Bond Commission in Qualified Investments (except for the Escrow Funds).

16. City Council hereby approves all costs of issuance in connection with the Notes and the Series 2005 Bonds and authorizes the payment thereof.

17. The Escrow Agent is hereby authorized to mail the notice of redemption of the Series 1993 Bonds as provided in the Prior Ordinance in order to call the Series 1993 Bonds on or about March 15, 2005, and is hereby authorized to mail the notice of redemption of the Series 1994/1995 Bonds as provided in the Prior Ordinance in order to call the Series 1994/1995 Bonds on or about April 10, 2005.

18. The City hereby recognizes the statutory mortgage lien, created by Chapter 8, Article 16, Section 22 and 24, on the Parking System.

19. The City hereby determines that the Series 2005 A Bonds shall be "deemed designated" as qualified tax exempt obligations within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code, as amended.

20. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required as desirable in connection with the issuance and sale of each series of the Notes and the 2005 A Bonds to the end that the Notes and each series of Bonds may be delivered on a timely basis to the Original Purchasers pursuant to the respective Bond Purchase Agreement.

21. This Supplemental Resolution shall go into effect immediately upon adoption.

Adopted this 7th day of February, 2005.

The question being on the adoption of the Resolution a roll call was taken and there were; yeas-23, nays-0, absent-2, abstain-3, as follows:
YEAS: Chestnut, Clowser, Deitzler, Ealy, Hall, Harris, Higgins, Jones, Lane, Lanham, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, White, Mayor Jones.
NAYS:
ABSENT: Davis, Hanna.
ABSTAIN: Harrison, Loeb, Weintraub,

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 765-05, adopted.

18. Your Committee on Finance has had under consideration Resolution No. 766-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 766-05: "Authorizing the Mayor to sign Change Order No. 2 with Progressive Electric, Inc., in the amount of $55,416.63, for changes made in conjunction with site lighting, revised third base building, sign pole lights, and for the purchase of a generator, increasing the contract amount to $1,109,416.63."

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 Progressive Electric, Inc., in the amount of Fifty-five Thousand Four Hundred Sixteen Dollars and Sixty-three Cents ($55,416.63), for changes made in conjunction with site lighting, revised third base building, sign pole lights, and for the purchase of a generator, increasing the contract amount to $1,109,416.63.

The question being on the adoption of the Resolution a vote was taken. There being no dissent the Mayor declared Resolution No. 766-05, adopted.

19. Your Committee on Finance has had under consideration Resolution No. 767-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 767-05: "Authorizing the Mayor to sign the Governor's Community Partnership Grant Program Contract, in the amount of $100,000, to provide funds for the construction of a canopy system at the new Baseball Stadium."

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

That the Mayor is hereby authorized and directed to sign the Governor's Community Partnership Grant Program Contract, in the amount of One Hundred Thousand Dollars ($100,000), to provide funds for the construction of a canopy system at the new Baseball Stadium.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 767-05, adopted.

20. Your Committee on Finance has had under consideration Resolution No. 768-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 768-05: "Authorizing the Mayor to sign Amendments No. 6, No. 7, and No. 8 relating to additional architectural services for the new ballpark. The amendments increase the total contract amount to $1,196,950, plus expenses."

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

That the Mayor is hereby authorized and directed to sign Amendments No. 6, No. 7, and No. 8 relating to additional architectural services for the new ballpark. The amendments increase the total contract amount to $1,196,950, plus expenses. The amendments are as follows:

Amendment No. 6 HNTB will engage the services of Associated Architects, Inc. to provide Construction Administration Services for and during the interior fit-out of the 601 Morris Building on the new ballpark site. These services will be provided on an hourly basis, plus expenses.

Amendment No. 7 Design and provide Construction Documents for a canopy structure behind home plate to cover up to four rows of seating at a cost of $5,000, plus expenses.

Amendment No. 8 Design and provide Construction Documents for a canopy structure along the third base line covering a portion of the concourse at a cost of $6,000, plus expenses.

The question being on the adoption of the Resolution a vote was taken. There being one dissent from Markham the Mayor declared Resolution No. 768-05, adopted.

21. Your Committee on Finance has had under consideration Resolution No. 769-05, and reports the same to Council with the recommendation that the committee report be adopted.

Resolution No. 769-05: "Authorizing the Finance Director to make revisions to the 2004-2005 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 Finance Director is hereby authorized and directed to make revisions to the 2004-2005 Parking System 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-2, as follows:
YEAS: Chestnut, Clowser, Deitzler, Ealy, Hall, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
NAYS:
ABSENT: Davis, Hanna.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 769-05, adopted.

22. Your Committee on Finance has had under consideration a bid submitted by Krigger & Company, Inc., in the amount of $35,811, for purchase of one (1) Jacobsen LF-3400 Fairway Mower to be used by the Parks & Recreation Department. To be charged to Account No. 001-979-00-900-4-461, P&R – Capital Outlay, Lease/Purchase, and reports the same to Council with the recommendation that he 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.

23. Your Committee on Finance has had under consideration a bid submitted by Century Equipment, in the amount of $11,399.05 for purchase of one (1) Sand Pro 3200 to be used by the Parks & Recreation Department. To be charged to Account No. 001-979-00-900-4-461, P&R – Capital Outlay, Lease/Purchase, and reports the same to Council with the recommendation that he 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.

24. Your Committee on Finance has had under consideration a Payment of an invoice from American Electric Power, in the amount of $29,323, for relocation of utilities in the Morris Square area. To charged to Account No. 220-975-00-420-4-458, Engineering – Capital Outlay, Major Improvements, and reports the same to Council with the recommendation that he Committee Report be adopted.

The question being on the adoption of the committee report a vote was taken. There being one dissent from Markham, the Mayor declared the committee report adopted. Abstain: Higgins

25. Your Committee on Finance has had under consideration a Payment of an invoice from Charleston Sanitary Board, in the amount of $20,680, for costs associated with Chesterfield Avenue Storm Drain Cleaning Project. To be charged to Account No. 220-975-00-420-4-459, Engineering – Capital Outlay, Major Improvements, and reports the same to Council with the recommendation that he 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.

26. Your Committee on Finance has had under consideration a Payment of an invoice from Royal Jeep, Subaru & Suzuki in the amount of $11,293.80, for repairs made to Police Unit 205 that was damaged in an accident on October 14, 2004. To be charged to Account No. 001-700-00-000-2-217, Police – Maintenance & Repairs, Vehicles, and reports the same to Council with the recommendation that he 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.

## REPORTS OF OFFICERS

1. Report of the City of Charleston Financial Statements for the Six-Month period ended December 31, 2004.
Received and Filed.

2. Report of the City of Charleston Firemen's Pension and Relief Fund Actuarial Valuation Report for the Year Beginning July 1, 2003.
Received and Filed.

3. Report of the City of Charleston Policemen's Pension and Relief Fund Actuarial Valuation Report for the Year Beginning July 1, 2003.
Received and Filed.

4. Report of the City of Charleston Payroll Variance Analysis;
December 2004;
Received and Filed.

## NEW BILLS INTRODUCED

Introduced by Councilwoman Mary Jean Davis, February 7, 2005:
Bill No. 7126, a bill adopting certain rules and procedures for the Municipal Planning Commission. Rules and procedures may be adopted by the Municipal Planning Commission and approved by City Council pursuant to the authority given to the Commission by Section 8A-2-11 of the State Code, Section 90-36 of the City Code and Section 26-5 of the Zoning Ordinance.
Refer to Municipal Planning Commission.

Introduced by Councilman Jim Harris, February 7, 2005:
Bill No. 7127, a bill abandoning an closing permanently a portion of that certain 30 foot wide public alley or way known as Oak Avenue, generally parallel to Kennawa Drive and extending from Washington Heights Drive north-westerly direction 1176.21 feet and conveying as public property being a parcel of land containing 0.709 acre, in North Charleston Tax district, City of Charleston, Kanawha County, West Virginia; and reserving sewer easement for the City of Charleston, West Virginia.
Refer to Municipal Planning Commission.

Introduced by Councilman Robert Reishman, February 7, 2005:
Bill No. 7128, A Bill to establish a Stop intersection at the intersection of Stonehenge Road and Dunlevy Road requiring vehicles northbound on Dunlevy Road to stop and requiring vehicles southbound on Stonehenge Road to stop except when turning right and amending 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, Section 263, Division 2, Article 4, Chapter 114, to conform therewith.
Refer to Council Committee on Streets and Traffic.

Introduced by Councilman Jim Harris, February 7, 2005:
Bill No. 7129, A Bill to establish a 15 minute parking zone on the easterly side of Elizabeth Street from a point 25 feet north of Washington Street, East to a point 61 feet north of Washington Street, East and amending 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, Section 263, Division 2, Article 4, Chapter 114 to conform therewith.
Refer to Council Committee on Streets and Traffic.

## ROLL CALL

The Clerk called the roll and the following members were in attendance:

YEAS: Chestnut, Clowser, Deitzler, Ealy, Hall, Harris, Harrison, Higgins, Jones, Lane, Lanham, Loeb, Markham, Miller, Monroe, Morton, Nielsen, Reed, Reishman, Robertson, Sadd, Talkington, Ware, Weintraub, White, Mayor Jones.
ABSENT: Davis, Hanna.

At 8:10 p.m., on motion of Councilman Loeb, Council adjourned until Tuesday, February 22, 2005, at 7:00 p.m.

_____
Danny Jones, Honorable Mayor

_____
James M. Reishman, City Clerk

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| INVOICE NBR | 196962001 |

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|---|---|
| INVOICE DATE | 02/07/05 |
| ACCOUNT NBR | 014243003 |
| SALES REP ID | 0072 |
| INVOICE NBR | 196962001 |



Legal pricing is based upon 63 words per column inch.
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| ISSUE DATE | AD TYPE | PUB | DESCRIPTION / REFERENCE NBR PURCHASE ORDER # | AD NUMBER | AD SIZE / TOTAL RUN | RATE | GROSS AMOUNT | NET AMOUNT |
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| | | | 196962004 | | 12.50 | 8.19 | 102.38 | |
| | | | LEGAL DISCOUNT 25% | | | | 25.60- | 76.78 |
| | | | TOTAL INVOICE AMOUNT | | | | | 358.32 |

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

I, Sandra Riggs 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
The City of charleston
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 29TH day of JANUARY 2005. Published during the following dates: 01/28/05-02/04/05

Subscribed and sworn to before me this 8 day of February.

Printers fee $ 358.32

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LYNN R. FIELDER
253 FRAZIER WAY
SCOTT DEPOT, WV 25560
My commission expires December 11, 2006

Lynn R. Fielder
Notary Public of Kanawha County, West Virginia

CHARLESTON NEWSPAPERS
P.O. Box 2993
Charleston, West Virginia 25330
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Classified 348-4848
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| INVOICE DATE | 02/07/05 |
| ACCOUNT NBR | 014243003 |
| SALES REP ID | 0072 |
| INVOICE NBR | 196962001 |

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| ISSUE DATE | AD TYPE | PUB | DESCRIPTION / REFERENCE NBR PURCHASE ORDER # | AD NUMBER | AD SIZE / TOTAL RUN | RATE | GROSS AMOUNT | NET AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 01/28 | LEGF | DM | The City of charlest | 0151498 | 1X1250 | | | |
| | | | 196962001 | | 12.50 | 8.19 | 102.38 | 102.38 |
| 01/28 | LEGF | GZ | The City of charlest | | 1X1250 | | | |
| | | | 196962002 | | 12.50 | 8.19 | 102.38 | 102.38 |
| 02/04 | LEGR | DM | The City of charlest | | 1X1250 | | | |
| | | | 196962003 | | 12.50 | 8.19 | 102.38 | |
| | | | LEGAL DISCOUNT 25% | | | | 25.60- | 76.78 |
| 02/04 | LEGR | GZ | The City of charlest | | 1X1250 | | | |

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 $

_____

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 January 18, 2005, the Council of The City of Charleston, West Virginia (the "City") adopted an ordinance which, among other things:

1. Authorized the refunding of the Parking System Refunding Revenue Bonds, Series 1993, the Parking System Revenue Bonds, Series 1994 A, the Parking System Subordinate Revenue Bonds, Series 1994 B and the Parking System Subordinate Revenue Bonds, Series 1995 A of The City of Charleston; authorized the issuance of not more than $3,500,000 in Parking System Bond Anticipation Notes; authorized the issuance of not more than $12,885,000 in aggregate principal amount of Parking System Refunding Revenue Bonds, Series 2005 A and Series 2005 B, of The City of Charleston (collectively, the "2005 Bonds"), 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 finance the cost of such refunding, to fund reserve accounts for such bonds and to pay other costs in connection therewith; provided for the rights and remedies of and security for the registered owners of such bonds, all with respect to the City's Parking System (the "System").

2. Directed that the 2005 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.

3. 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 2005 Bonds.

4. Provided that the 2005 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 2005 Bonds and established the rights of the registered owners of the Bonds to such Net Revenues.

5. Provided certain conditions for the issuance of additional bonds.

6. Established the events of default and the remedies of the registered owners.

The City contemplates the issuance of the 2005 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 regular meeting on February 7, 2005, 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 January 18, 2005, 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 – The City of Charleston,
West Virginia

(151498)

THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B

CERTIFICATE OF DETERMINATION

The undersigned, Danny Jones, Mayor of The City of Charleston (the "City"), in accordance with Section 2 of the Supplemental Resolution adopted by the Council of the City on February 7, 2005 (the "Supplemental Resolution"), with respect to The City of Charleston, West Virginia Parking System Refunding Revenue Bonds, Series 2005 B hereby finds and determines as follows:

1. The Series 2005 B Bonds shall be dated April 1, 2005.

2. The Series 2005 B Bonds shall be issued in the aggregate principal amount of $2,655,000. Such principal amount does not exceed $2,885,000, being the maximum principal amount authorized by the Supplemental Resolution.

3. The Series 2005 B Bonds shall mature in the amounts and on the dates set forth on Schedule 1 attached hereto and incorporated herein.

4. The Series 2005 B Bonds shall bear interest at the rates and produce the yields set forth on Schedule 1 attached hereto and incorporated herein, which rates do not exceed 12%.

5. The Series 2005 B Bonds shall be subject to optional redemption as set forth on Schedule 2 attached hereto and incorporated herein.

6. The Series 2005 B Bonds shall be issued and delivered to The Depository Trust Company, New York, New York, for the account of Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (collectively, the "Underwriters"), pursuant to the terms of the Purchase Agreement by and between the Underwriters and the City, in exchange for the tender of the City's Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes") on April 1, 2005.

7. Upon the delivery of the Series 2005 B Bonds:

(a) Such funds as are necessary therefore on deposit with the West Virginia Municipal Bond Commission (the "Bond Commission") in the Note Repayment Account established and existing for the City's Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes"), shall be used to pay all outstanding interest that has accrued on the Series 2005 Notes from February 1, 2005 to and including March 31, 2005;

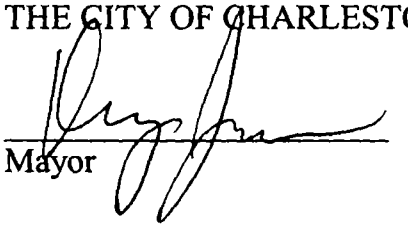
(b) Following the payment of interest on the Series 2005 Notes, all remaining funds on deposit with the Bond Commission in the Note Repayment Account shall be transferred to the Series 2005 B Bonds Sinking Fund and be used to pay principal of and interest on the Series 2005 B Bonds on June 1, 2005;

(c) All funds on deposit with the Bond Commission in the Note Reserve Account established for the Series 2005 Notes, being $265,500.00, shall be transferred to the Series 2005 B Bonds Reserve Account;

The undersigned hereby certifies that the foregoing terms and conditions of the Series 2005 B Bonds are within the parameters prescribed by the Supplemental Resolution, and the Series 2005 B Bonds may be issued with such terms and conditions as authorized by the Supplemental Resolution.

WITNESS my signature this 23rd day of March, 2005.

THE CITY OF CHARLESTON



Mayor

Schedule 1

Series 2005 B Bonds
Maturity Schedule

$2,655,000 Serials

| Maturity | Amount | Interest Rate | Price or Yield |
|---|---|---|---|
| 06/01/2005 | $ 105,000 | 3.000% | 3.000% |
| 06/01/2006 | 300,000 | 3.500 | 3.500 |
| 06/01/2007 | 305,000 | 3.700 | 3.700 |
| 06/01/2008 | 320,000 | 3.900 | 3.900 |
| 06/01/2009 | 335,000 | 4.000 | 4.000 |
| 06/01/2010 | 345,000 | 4.100 | 4.208 |
| 06/01/2011 | 360,000 | 4.200 | 4.292 |
| 06/01/2012 | 370,000 | 4.300 | 4.381 |
| 06/01/2013 | 215,000 | 4.400 | 4.473 |

## Schedule 2

Optional Redemption

At the option of the City, the Series 2005 B Bonds are subject to redemption prior to maturity on or after June 1, 2010, in whole or in part, at any time, in inverse order of maturity by lot within a maturity, at par, plus interest, if any, accrued to the date fixed for redemption.

THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

REQUEST AND AUTHORIZATION TO
AUTHENTICATE AND DELIVER THE BONDS

United Bank, Inc.
as Registrar
Charleston, West Virginia

Ladies and Gentlemen:

There are delivered to you herewith as Registrar for the above-captioned Bonds:

1. Bonds Nos. BR-1 through BR-9, constituting the entire original issue of The City of Charleston, West Virginia Parking System Refunding Revenue Bonds, Series 2005 B, dated April 1, 2005, in the aggregate principal amount of $2,655,000, all executed by the Mayor and the City Clerk of The City of Charleston (the "Issuer"), and bearing the official seal of the Issuer. The Bonds are authorized to be issued under and pursuant to a Bond Ordinance enacted by the Council of the Issuer on February 7, 2005, as supplemented by Supplemental Resolution adopted by the Council of the Issuer on February 7, 2005 (collectively, the "Ordinance").

2. A Copy of the Ordinance certified by the City Clerk of the Issuer.

3. A list of the names in which the Bonds are to be registered upon original issue: CEDE & CO.

4. A signed, unqualified approving opinion of Jackson Kelly PLLC, as bond counsel.

5. Such other documents, certifications and verifications as the original purchaser may reasonably require.

You are hereby requested and authorized, pursuant to Section 3.12 of the Ordinance, to authenticate, register and deliver the Bonds to The Depository Trust Company, New York, New York, for the account of Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated, as the original purchasers thereof.

Dated this 1st day of April, 2005.

THE CITY OF CHARLESTON

[SEAL]

Mayor

ATTEST:

City Clerk

# Blanket Issuer Letter of Representations

[To be Completed by Issuer]

The City of Charleston, West Virginia
[Name of Issuer]

November 21, 2002
[Date]

Attention: Underwriting Department — Eligibility
The Depository Trust Company
55 Water Street; 50th Floor
New York, NY 10041-0099

Ladies and Gentlemen:

This letter sets forth our understanding with respect to all issues (the "Securities") that Issuer shall request be made eligible for deposit by The Depository Trust Company ("DTC").

To induce DTC to accept the Securities as eligible for deposit at DTC, and to act in accordance with DTC's Rules with respect to the Securities, Issuer represents to DTC that Issuer will comply with the requirements stated in DTC's Operational Arrangements, as they may be amended from time to time.

Note:

Schedule A contains statements that DTC believes accurately describe DTC, the method of effecting book-entry transfers of securities distributed through DTC, and certain related matters.

Very truly yours,

The City of Charleston, West Virginia
(Issuer)

By: _____
(Authorized Officer's Signature)

Jay Goldman, Mayor
(Typed Name & Title)

501 Virginia Street, East
(Street Address)

Charleston, WV 25301
(City) (State) (Zip)

(304) 348-8174
(Phone Number)

Received and Accepted:

THE DEPOSITORY TRUST COMPANY

By: _____

**SCHEDULE A**

## SAMPLE OFFERING DOCUMENT LANGUAGE DESCRIBING BOOK-ENTRY-ONLY ISSUANCE

**(Prepared by DTC—bracketed material may be applicable only to certain issues)**

1. The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the securities (the "Securities"). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered Security certificate will be issued for [each issue of] the Securities, [each] in the aggregate principal amount of such issue, and will be deposited with DTC. [If, however, the aggregate principal amount of [any] issue exceeds $200 million, one certificate will be issued with respect to each $200 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of such issue.]

2. DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants ("Participants") deposit with DTC. DTC also facilitates the settlement among Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Rules applicable to DTC and its Participants are on file with the Securities and Exchange Commission.

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC's records. The ownership interest of each actual purchaser of each Security ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of Securities with DTC and their registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

[6. Redemption notices shall be sent to Cede & Co. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.]

7. Neither DTC nor Cede & Co. will consent or vote with respect to Securities. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Principal and interest payments on the Securities will be made to DTC. DTC's practice is to credit Direct Participants' accounts on payable date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on payable date. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Agent, or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to DTC is the responsibility of the Issuer or the Agent, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

[9. A Beneficial Owner shall give notice to elect to have its Securities purchased or tendered, through its Participant, to the [Tender/Remarketing] Agent, and shall effect delivery of such Securities by causing the Direct Participant to transfer the Participant's interest in the Securities, on DTC's records, to the [Tender/Remarketing] Agent. The requirement for physical delivery of Securities in connection with a demand for purchase or a mandatory purchase will be deemed satisfied when the ownership rights in the Securities are transferred by Direct Participants on DTC's records.]

10. DTC may discontinue providing its services as securities depository with respect to the Securities at any time by giving reasonable notice to the Issuer or the Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Security certificates are required to be printed and delivered.

11. The Issuer may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered.

12. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Issuer believes to be reliable, but the Issuer takes no responsibility for the accuracy thereof.

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

May 12, 2005

**CERTIFIED - RETURN**
**RECEIPT REQUESTED**

Internal Revenue Service Center
Ogden, UT 84201

Re: $2,655,000 The City of Charleston, West Virginia
Parking System Refunding Revenue Bonds, Series 2005 B

Ladies and Gentlemen:

Enclosed are two copies of Form 8038-G, Information Return for Tax-Exempt Governmental Obligations, relative to the above-described bond issue. Please file one copy and return one copy marked "Filed" to the undersigned in the enclosed postage paid, self-addressed envelope.

Very truly yours,

Samme L. Gee

SLG:lp

Enclosure

C0944886.1

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<br>**The City of Charleston, West Virginia** | 2 **Issuer's employer identification number**<br>**55 : 6000160** |
| 3 | Number and street (or P.O. box if mail is not delivered to street address)<br>**501 Virginia Street, East** | Room/suite<br>4 Report number<br>**3 03** |
| 5 | City, town, or post office, state, and ZIP code<br>**Charleston, West Virginia 25301** | 6 Date of issue<br>**April 1, 2005** |
| 7 | Name of issue<br>**$2,655,000 Parking System Refunding Revenue Bonds, Series 2005 B** | 8 CUSIP number<br>**160591FS7** |
| 9 | Name and title of officer or legal representative whom the IRS may call for more information<br>**Danny Jones, Mayor** | 10 Telephone number of officer or legal representative<br>**( 304 ) 348-8174** |

**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 | |
| 16 | ☐ Housing | 16 | |
| 17 | ☐ Utilities | 17 | |
| 18 | ☑ Other. Describe ▶ **Municipal Parking** | 18 | 2,655,000 |
| 19 | If obligations are TANs or RANs, check box ▶ ☐ If obligations are BANs, check box ▶ ☐ | | |
| 20 | If obligations are in the form of a lease or installment sale, check box ▶ ☐ | | |

**Part III Description of Obligations.** Complete for the entire issue for which this form is being filed.

| | (a) Final maturity date | (b) Issue price | (c) Stated redemption price at maturity | (d) Weighted average maturity | (e) Yield |
|---|---|---|---|---|---|
| 21 | **06/01/2013** | $ 2,655,000 | $ **2,655,000** | **4.457** years | **4.1918** % |

**Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)** *1

| | | | | | |
|---|---|---|---|---|---|
| 22 | Proceeds used for accrued interest | | | 22 | 0 |
| 23 | Issue price of entire issue (enter amount from line 21, column (b)) | | | 23 | 2,655,000 |
| 24 | Proceeds used for bond issuance costs (including underwriters' discount) | 24 | 0 | | |
| 25 | Proceeds used for credit enhancement | 25 | 0 | | |
| 26 | Proceeds allocated to reasonably required reserve or replacement fund | 26 | 0*2 | | |
| 27 | Proceeds used to currently refund prior issues | 27 | 2,655,000*3 | | |
| 28 | Proceeds used to advance refund prior issues | 28 | 0 | | |
| 29 | Total (add lines 24 through 28) | | | 29 | 2,655,000 |
| 30 | Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) | | | 30 | 0 |

**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 ▶ | 4.596 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 ▶ | April 1, 2005 |
| 34 | Enter the date(s) the refunded bonds were issued ▶ | February 11, 2005 |

**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.

▶ _____ April 1, 2005 ▶ **Danny Jones, Mayor**
Signature of issuer's authorized representative — Date — Type or print name and title



*1 See attached 8038-G filed with respect to the Issuer's $2,655,000 Parking System Bond Anticipation Notes, Series 2005
*2 $265,500 transferred from Series 2005 Note Reserve Account to the Series 2005 B Bonds Reserve Account
*3 Series 2005 Notes tendered on April 1, 2005 in exchange for Series 2005 B Bonds.

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<br>**The City of Charleston, West Virginia** | 2 | Issuer's employer identification number<br>**55 : 6000160** |
| 3 | Number and street (or P.O. box if mail is not delivered to street address)<br>**501 Virginia Street, East** | Room/suite | 4 Report number<br>**3 01** |
| 5 | City, town, or post office, state, and ZIP code<br>**Charleston, West Virginia 25301** | 6 | Date of issue<br>**February 11, 2005** |
| 7 | Name of issue<br>**$2,655,000 Parking System Bond Anticipation Notes, Series 2005** | 8 | CUSIP number<br>**160591FH1** |
| 9 | Name and title of officer or legal representative whom the IRS may call for more information<br>**Danny Jones, Mayor** | 10 | Telephone number of officer or legal representative<br>**( 304 ) 348-8174** |

## 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 | |
| 16 | ☐ Housing | 16 | |
| 17 | ☐ Utilities | 17 | |
| 18 | ☑ Other. Describe ▶ **Municipal Parking** | 18 | **2,648,550.00** |
| 19 | If obligations are TANs or RANs, check box ▶ ☐ If obligations are BANs, check box ▶ ☑ | | |
| 20 | If obligations are in the form of a lease or installment sale, check box ▶ ☐ | | |

## Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

| | (a) Final maturity date | (b) Issue price | (c) Stated redemption price at maturity | (d) Weighted average maturity | (e) Yield |
|---|---|---|---|---|---|
| 21 | **06/01/2013** | **$ 2,648,550.00** | **$ 2,655,000.00** | **4.596 years** | **3.0584 %** |

## Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

| | | | | | |
|---|---|---|---|---|---|
| 22 | Proceeds used for accrued interest | | | 22 | **2,212.50** |
| 23 | Issue price of entire issue (enter amount from line 21, column (b)) | | | 23 | **2,648,550.00** |
| 24 | Proceeds used for bond issuance costs (including underwriters' discount) | 24 | **142,257.51** | | |
| 25 | Proceeds used for credit enhancement | 25 | **0** | | |
| 26 | Proceeds allocated to reasonably required reserve or replacement fund | 26 | **265,500.00** | | |
| 27 | Proceeds used to currently refund prior issues | 27 | **2,240,792.49** | | |
| 28 | Proceeds used to advance refund prior issues | 28 | **0** | | |
| 29 | Total (add lines 24 through 28) | | | 29 | **2,648,550.00** |
| 30 | Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here) | | | 30 | **0** |

## 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 ▶ | **4.682** 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 ▶ | **March 14, 2005** |
| 34 | Enter the date(s) the refunded bonds were issued ▶ | **06/24/1993** |

## 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.

▶ _____ February 11, 2005 ▶ **Danny Jones, Mayor**
Signature of issuer's authorized representative — Date — Type or print name and title

$2,655,000
THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM BOND ANTICIPATION NOTES,
SERIES 2005

AND
WHEN, AS AND IF ISSUED

$2,655,000
THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

# BOND PURCHASE AGREEMENT

February 7, 2005

City of Charleston
P.O. Box 2749
Charleston, WV 25330

Ladies and Gentlemen:

1. Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated and (collectively, the "Underwriter") offers to enter into the following agreement with you, the City of Charleston (the "City"), which, upon your acceptance of this offer, will become binding upon you and upon the Underwriter. This offer is made subject to your acceptance by execution of this Bond Purchase Agreement (the "Purchase Contract") and its delivery to us on or before 10:00 P.M., prevailing time, today. Terms used and not defined in this Purchase Contract have the meanings given to them in the Official Statement hereinafter referred to.

2. Upon the terms and conditions and upon the basis of the representations and warranties hereinafter set forth, the Underwriter hereby agrees to purchase from you for offering to the public, and you hereby agree to sell to the Underwriter for such purpose, all (but not less than all) of $2,655,000 aggregate principal amount of the City of Charleston, Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes"), and when, as and if issued, the $2,655,000 City of Charleston, Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds" and, together with the Series 2005 Notes, the "Series 2005 Bonds" or the "Bonds"), having the principal amounts and maturities and bearing interest at the rates stated in Exhibit A hereto, at the aggregate purchase price of $2,584,387.50. This purchase price reflects a net original issue discount of $6,450.00 and underwriters' discount of $66,375.00, plus accrued interest of $2,212.50 on the Series 2005 Notes from February 1, 2005 to the date of the Closing.

3. The Bonds shall be as described in, and shall be issued pursuant to, an Ordinance and a Supplemental Resolution enacted by City Council of the City and effective on February 7, 2005 (together, the "Ordinance" or "Bond Ordinance"). The Series 2005 Notes are unsecured. The Series 2005 B Bonds, when, as and if issued, shall be secured by the parking system revenues collected by the City on parity with the City's proposed Parking System Refunding Revenue Bonds, Series 2005 A.

4. We agree to make a bona fide public offering of all the Bonds not in excess of the initial public offering prices (which may be expressed in terms of yields), set forth on the cover page of the Official Statement (hereinafter defined), plus interest accrued thereon from the date thereof, reserving, however, the right to change such yields or prices as the Underwriter shall deem necessary in connection with the offering of the Bonds, even after the initial offering.

5. (a) Prior to the date hereof, you have provided for our review a form of Official Statement that the City deems final as of its date, except for certain omissions in connection with the pricing of the Bonds. At the time of or before your acceptance hereof, you shall deliver to us three executed copies of the Official Statement of the City dated today relating to the Bonds (the form of which, together with the cover page and all appendices or supplements thereto as are adopted by the City in accordance herewith and other reports or statements attached thereto or included therein, is called the "Official Statement") executed on behalf of the City by its Chairman.

(b) You authorize any and all of this material, including specifically the Official Statement and the information therein contained, to be used in connection with the public-offering and sale of the Bonds. The City hereby ratifies the use by the Underwriter prior to the date hereof of the Preliminary Official Statement of the City dated February 2, 2005, in connection with the public offering of the Bonds.

(c) You agree to deliver or cause to be delivered to the Underwriter, at such address as the Underwriter shall specify, as many additional copies of the Official Statement as the Underwriter shall reasonably request as necessary to comply with paragraph (b)(4) of Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 CFR §240.15c2-12) (the "Rule"). You agree to deliver such additional copies of the Official Statement, complete as of its date of delivery and in form satisfactory to the Underwriter, upon acceptance hereof or as soon as practicable thereafter (but in any event within seven (7) business days after the date hereof and in sufficient time to accompany any confirmation that requests payment from any customer).

The Underwriter agrees to give notice to the City on the date after which the Underwriter shall no longer be obligated to deliver the Official Statement pursuant to paragraph (b)(4) of the Rule.

(d) From the date hereof, if, until the earlier of (i) 90 days from the end of the underwriting period or (ii) the time when the Official Statement is available to any person from a nationally recognized municipal securities information repository (but in no case less than twenty-five (25) days following the end of the underwriting period), any event occurs as a result of which,

it may be necessary to amend or supplement the Official Statement in order to make the statements therein, in light of the circumstances under which they were made, not misleading, the City shall notify the Underwriter and, if in the opinion of the City or the Underwriter, such event requires the preparation and publication of an amendment or supplement to the Official Statement, the City, at its expense, promptly will prepare an appropriate amendment or supplement thereto (and file, or cause to be filed, the same with a nationally recognized municipal securities information repository) so that the statements in the Official Statement as so amended or supplemented will not, in light of the circumstances under which they were made, be misleading.

6. The City represents and warrants to the Underwriter that:

(a) The City is a public corporation and political subdivision of the State of West Virginia (the "State"), established and existing under the laws of the State, and has, and at the date of the Closing will have, full legal right, power and authority (i) to enter into this Purchase Contract, (ii) to enact the Ordinance providing for the issuance of and security for the Bonds (including the pledge by the City of the parking system revenues), (iii) to issue, sell and deliver the Bonds to the Underwriter as provided herein; and (iv) to carry out and to consummate the transactions contemplated by this Purchase Contract, the Ordinance and the Official Statement;

(b) The City has complied, and will at the Closing be in compliance, in all respects with Chapter 8, Article 12, Chapter 8, Article 16 and Chapter 13, Article 2E of the West Virginia Code of 1931, as amended (collectively, the "Act");

(c) By official action of the City prior to or concurrently with the acceptance hereof, the City has duly authorized the Ordinance and has duly ratified the distribution of the Preliminary Official Statement and the execution and delivery of the Official Statement, has duly authorized and approved the execution and delivery of, and the performance by the City of the obligations contained in, the Series 2005 Bonds and this Purchase Contract and has duly authorized and approved the performance by the City of the obligations contained in the Ordinance and the consummation by it of all other transactions contemplated by the Official Statement;

(d) The execution and delivery of this Purchase Contract and the Series 2005 Bonds and the execution of the Ordinance and compliance with their respective provisions will not conflict with or constitute a breach of or default under any applicable law or administrative regulation of the State of West Virginia or the United States or any applicable judgment or decree or any agreement or other instrument to which the City is a party or is otherwise subject and will not conflict with any provision of the Act;

(e) We have no reason to believe that, the financial statements relating to the City in the Official Statement do not fairly present the respective financial positions and results of operations of the City as of the dates and for the periods therein set forth;

(f) At the time of the City's acceptance hereof, the Preliminary Official Statement was and the Official Statement, as of the date hereof is, and as it may be amended or supplemented at the date of delivery to the Underwriter and at the Closing will be, true and correct in all material respects and the Preliminary Official Statement did not, and the Official Statement

does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and, in addition, any amendments or supplements to the Official Statement prepared and furnished by the City pursuant hereto will not contain any untrue statement of a material fact or omit to state any material facts necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(g) Between the date of this Purchase Contract and the Closing, the City will not issue any bonds, notes or other obligations for borrowed money, secured by the Lease, except as described in or contemplated by the Official Statement, and without the prior written consent of the Underwriter, the City will not incur any material liabilities, direct or contingent, nor will there be any adverse change of a material nature in the financial position, results of operations or condition, financial or otherwise, of the City;

(h) No litigation is pending or, to the knowledge of the City, threatened in any court in any way restraining or to enjoining the issuance or delivery of the Bonds, or the security therefore or the proceedings or authority under which they are to be issued;

(i) To the best of your knowledge, there is no litigation pending or, to the City's knowledge, threatened against the City, wherein an unfavorable decision would adversely affect the ability of the City to carry out its obligations under the Ordinance or would have a material adverse impact on the financial position or results of operations of the City;

(j) The City will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter, as the Underwriter reasonably may request to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate and to provide for the continuance of such qualifications, but won't subject the City to service of process in jurisdictions other than that to which the City is subject pursuant to the Act; and

(k) If between the date of this Purchase Contract and the date of the Closing an event occurs affecting the City which is materially adverse for the purpose for which the Official Statement is to be used and is not disclosed in the Official Statement, the City shall notify the Underwriter and if in the opinion of the Underwriter and counsel to the Underwriter such event requires a supplement or amendment to the Official Statement, the City will supplement or amend the Official Statement in a form and in a manner approved by the Underwriter and counsel to the Underwriter.

7. (a) At 10:00 A.M., prevailing time, on February 11, 2005, or at such other time or on such earlier or later business day as shall have been mutually agreed upon by you and us, you will deliver to us the Series 2005 Notes in definitive form, duly executed and authenticated, together with the other documents hereinafter mentioned; and, subject to the terms and conditions hereof, the undersigned will accept such delivery and pay the purchase price of the Bonds as set forth in Paragraph 2 hereof, by making a wire transfer in federal funds payable to the order of the West Virginia Municipal Bond Commission, as Escrow Trustee. Upon payment as aforesaid, the Series 2005 Notes will be delivered to The Depository Trust Company in New York, New York,

using the DTC FAST closing procedure. This payment and delivery is herein called the "Closing." The Series 2005 Notes will be delivered as fully registered bonds, one for each stated maturity of the Series 2005 Notes in the aggregate principal amount of such maturity, bearing proper, duly assigned CUSIP numbers, and registered in the name of The Depository Trust Company's nominee, Cede &Co., and, if the Underwriter shall so request, will be made available to the Underwriter at least twenty-four (24) hours before the Closing for inspection and packaging.

(b) At 10:00 A.M., prevailing time, on April 1, 2005, or at such other time or on such earlier or later business day as shall have been mutually agreed upon by you and us, you will deliver to us the Series 2005 B Bonds in definitive form, duly executed and authenticated, together with the other documents hereinafter mentioned; and, subject to the terms and conditions hereof and as set forth in the Ordinance, holders of the Series 2005 Notes will tender their Notes in exchange for Series 2005 B Bonds. The Series 2005 B Bonds will be delivered to The Depository Trust Company in New York, New York, using the DTC FAST closing procedure. This payment and delivery is herein called the "Closing." The Series 2005 B Bonds will be delivered as fully registered bonds, one for each stated maturity of the Series 2005 B Bonds in the aggregate principal amount of such maturity, bearing proper, duly assigned CUSIP numbers, and registered in the name of The Depository Trust Company's nominee, Cede &Co., and, if the Underwriter shall so request, will be made available to the Underwriter at least twenty-four (24) hours before the Closing for inspection and packaging.

8. The Underwriter has entered into this Purchase Contract in reliance upon the representations and warranties of the City contained herein and to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the City of its obligations hereunder, both as of the date hereof and as of the date of Closing. Accordingly, the Underwriter's obligations under this Purchase Contract to purchase, accept delivery of and to pay for the Bonds shall be subject to the accuracy in all material respects of the representations and warranties of the City contained herein as of the date hereof and the date of Closing, to the performance by the City of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing, and to the following conditions:

(a) At the time of the Closing (i) the Ordinance shall be in full force and effect and shall not have been amended, modified or supplemented since the date hereof except as may have been agreed to in writing by us, and you shall have duly adopted and there shall be in full force and effect such additional agreements, as shall, in the opinion of Jackson Kelly PLLC, Bond Counsel, be necessary in connection with the transactions contemplated hereby; (ii) the City shall perform or have performed all of its obligations required under or specified in this Purchase Contract, the Ordinance to be performed at, simultaneously with or prior to the Closing; and (iii) the Bonds shall have been executed and authenticated in accordance with the Ordinance.

(b) We may terminate this agreement by notification to you if at any time subsequent to the date hereof and at or prior to the Closing, (i) legislation shall be enacted by the Congress or adopted by either House thereof or a decision by a Court of the United States or the Tax Court of the United States shall be rendered, or a ruling, regulation or official statement by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made, with respect to Federal taxation upon revenues or other

income of the general character expected to be derived by you and pledged under the Ordinance or upon interest received on bonds of the general character of the Bonds or which would have the effect of changing, directly or indirectly, the Federal income tax treatment of interest on bonds of the general character of the Bonds in the hands of the holders thereof, which in our opinion materially affects the market price of the Bonds; or (ii) a stop order, ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds is in violation of any provisions of the Securities Act of 1933, as amended or of the Trust Indenture Act of 1939, as amended; or (iii) legislation shall be enacted by the Congress or adopted by either House, or a decision by a court of the United States shall be rendered, or a ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made, to the effect that securities of the City or any similar public body are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended or the Trust Indenture Act of 1939, as amended; (iv) the United States shall have become engaged in hostilities that have resulted in a declaration of war or a national emergency; (v) other than conflicts underway involving the United States government as of the date hereof, a war involving the United States which shall have been declared, or any conflict involving the armed forces of the United States which shall have escalated, the effect of which on the financial markets of the United States is such as, in the reasonable judgment of the Underwriters, would materially adversely affect the market for the Bonds, or the sale, at the contemplated offering prices by the Underwriters as to the Bonds; (vi) there shall have occurred a general suspension of trading on the New York Stock Exchange or the declaration of a general banking moratorium by United States or New York or West Virginia State authorities, which in our opinion materially affects the market price of the Bonds; (vii) an event described in paragraph 6(k) hereof occurs which in our opinion requires a supplement or amendment to the Official Statement; or (viii) the market for the Bonds or the sale thereof by the Underwriter at the contemplated offering prices shall have been materially and adversely affected, in the opinion of the Underwriter, by reason of the fact that there has occurred a default with respect to the payment of principal of or interest on the debt obligations of, or the institution of proceedings under the Federal bankruptcy laws by or against, any state of the United States or public agency thereof or any city located in the United States with a population of more than 500,000;

(c) At or prior to each Closing, we shall receive the following documents:

(1) The Official Statement of the City, executed on behalf of the City by its Mayor;

(2) Fully authorized Ordinance;

(3) An opinion, dated the date of the Closing and addressed to the City, of Jackson Kelly PLLC, Bond Counsel, in substantially the form attached as Appendix D to the Official Statement, and an unqualified opinion of such counsel, dated the date of the Closing and addressed to the Underwriter, to the effect that such opinion addressed to the City may be relied upon by the Underwriter to the same extent as if such opinion were addressed to them;

(4) In connection with the Closing for the Series 2005 Notes, a supplemental bond counsel opinion, dated the date of the Closing and addressed to the Underwriter, of Jackson Kelly PLLC, Bond Counsel, to the effect that (i) this Purchase Contract has been duly authorized, executed and delivered by, and (assuming due authorization, execution and delivery by the other parties and that it is a binding agreement of the other parties in accordance with its terms) constitutes a binding agreement in accordance with its terms of, the City; (ii) the Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Ordinance is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; (iii) the statements contained in the Official Statement under the caption "Tax Matters" are true and accurate in all material respects and presents a fair and accurate summary and description of the matters summarized and described under such caption; and (iv) the statements contained in the Official Statement under the captions "Security for the Series 2005 Bonds," "The Series 2005 Bonds" (except for the statements made under the sub-captions "Book-Entry Only System" and "DTC" with respect to The Depository Trust Company), and "Plan of Financing," insofar as such statements contained under such captions purport to summarize certain matters set forth therein and certain provisions of the Ordinance, are complete and accurate and present a fair summary of the matters referred to therein;

(5) An opinion, dated the date of Closing and addressed to the Underwriter, of Steptoe & Johnson, PLLC, counsel for the City, to the effect that (i) the City has complied with all requirements of the Act that must be satisfied upon and subsequent to issuance of the Bonds, (ii) any requirement as to legal matters as the Underwriter shall reasonably require, (iii) no litigation is pending, or to their knowledge, threatened in any court in any way affecting the existence of the City or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the issuance or delivery of the Bonds, or the collection of revenues and assets of the City pledged or to be pledged to pay the principal of and interest on the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Bonds, the Ordinance or this Purchase Contract, or contesting the powers of the State with respect to the Bonds, the Ordinance or this Purchase Contract or any transaction described in or contemplated by the Official Statement, (iv) that the Official Statement, as amended or supplemented to the date of Closing (except as aforesaid) contains no untrue statement regarding the City of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein regarding the City, in light of the circumstances under which they were made, not misleading, and (v) the statements contained in the Official Statement under the caption "The City of Charleston," insofar as such statements contained under such caption purport to summarize certain matters set forth therein and certain provisions of the Ordinance, are complete and accurate and present a fair summary of the matters referred to therein;

(6) Duly authorized and executed copies of the Continuing Disclosure Certificate, in substantially the form attached as Appendix C to the Official Statement and incorporated herein, which complies with the provisions of Rule 15c2-12(b)(5);

(7) Two counterpart originals of a transcript of all proceedings relating to the authorization and issuance of the Bonds, certified by the Mayor of the City;

(8) An opinion of Steptoe & Johnson, PLLC to the effect that (i) no litigation is pending, or to his or her knowledge, threatened in any court in any way affecting the existence of the City or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the issuance or delivery of the Bonds, or the collection of revenues and assets of the City pledged or to be pledged to pay the principal of and interest on the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Bonds, the Ordinance or this Purchase Contract, or contesting the powers of the City with respect to the Bonds, the Ordinance or this Purchase Contract or any transaction described in or contemplated by the Official Statement, (ii) the statements contained in the Official Statement under the caption "The City," insofar as such statements contained under such caption purport to summarize certain matters set forth therein and certain provisions of the Ordinance, are complete and accurate and present a fair summary of the matters referred to therein, and (iii) such other matters as the Underwriter shall reasonably require;

(9) In connection with the Closing of the Series 2005 Notes, an opinion, dated the date of the Closing and addressed to the Underwriter, of Goodwin & Goodwin, LLP, Underwriters' Counsel, to the effect that (i) this Purchase Contract has been duly authorized, executed and delivered by, and (assuming due authorization, execution and delivery by the other parties and that it is a binding agreement of the other parties in accordance with its terms) constitutes a binding agreement in accordance with its terms of, the Underwriter; (ii) the Continuing Disclosure Certificate complies as to form in all material respects with the requirements of paragraph (b)(5) of the Rule; and (iii) that nothing has come to our attention that the Official Statement, as amended or supplemented to the date of Closing (except as aforesaid) contains no untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(10) Such additional legal opinions, certificates, instruments and other documents as the Underwriter or their counsel, Goodwin & Goodwin, LLP, reasonably may deem necessary or advisable to evidence the truth and accuracy, as of the date hereof and as of the date of the Closing, of the City's representations and warranties contained herein and of the statements and information contained in the Official Statement and the due performance or satisfaction by the City on or prior to the date of the Closing of all agreements then to be performed and all conditions then to be satisfied by the City;

All of the opinions, letters, instruments and other documents mentioned above or elsewhere in this Purchase Contract shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Underwriter and to Goodwin & Goodwin, LLP, counsel to the Underwriter.

If you shall be unable to satisfy the conditions of the obligations of the Underwriter contained in this Purchase Contract, or if the obligations of the Underwriter shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and neither the Underwriter nor you shall be under further obligation hereunder, and the respective obligations of you and the Underwriter for the payment of expenses, as provided in Paragraph 9 hereof, shall continue in full force and effect.

9. (a) The City will pay or cause to be paid from proceeds of the Bonds or otherwise (i) fees and expenses of bond counsel, counsel to the City, and Underwriters' counsel; (ii) initial fees of the Registrar; (iii) costs of preparing, printing, mailing and delivering the Preliminary Official Statement and the Official Statement and any amendments or supplements thereto, and (iv) any other costs and expenses of the issue not set forth in (b) below.

(b) The Underwriter will pay (i) sales commissions associated with marketing the Bonds; (ii) costs of qualification of the Bonds for sale under the securities or "Blue Sky" laws of various jurisdictions; (iii) initial fees relating to The Depository Trust Company; and (iv) costs and expenses incurred by the Underwriter in connection with the preparation, offering and distribution of the Bonds, including but not limited to advertising, local and long distance telephone, and travel expenses, as well as management fees in connection with such offering.

10. Any notice or other communication to be given to you under this Purchase Contract may be given by delivering the same in writing at your address set forth above, and any notice or other communication to be given to the Underwriter under this Purchase Contract may be given by delivering the same in writing to Crews & Associates, Inc., 300 Summers Street, Suite 930, Charleston, West Virginia 25301, Attention: Gregory B. Isaacs.

11. This Purchase Contract is made solely for the benefit of you and the Underwriter and no other person shall acquire or have any right hereunder or by virtue hereof. All your representations, warranties and agreements in this Purchase Contract shall remain operative and in full force and effect, regardless of (a) any investigation made by or on behalf of the Underwriter, (b) delivery of, and payment for, the Bonds hereunder, and (c) any termination of this Purchase Contract.

12. All of the City's representations, warranties and agreements shall remain operative and in full force and effect regardless of any investigations made by the Underwriter or on its behalf, and shall survive delivery of the Bonds to the Underwriter.

13. This Purchase Contract shall be construed and enforceable in accordance with the laws of the State of West Virginia and may not be assigned by the parties hereto.

Very truly yours,

CREWS & ASSOCIATES, INC., on behalf of itself
and FERRIS, BAKER WATTS, INCORPORATED

By _____
Vice President

CITY OF CHARLESTON

By: _____
Mayor

EXHIBIT A

Series 2005 Notes

| Maturity | Type of Bond | Coupon | Yield | Maturity Value | Price | Dollar Price |
|---|---|---|---|---|---|---|
| 06/01/2005 | Serial Step | 3.000% | 3.000% | 105,000.00 | 100.000% | 105,000.00 |
| 06/01/2006 | Serial Step | 3.000% | 3.000% | 300,000.00 | 100.000% | 300,000.00 |
| 06/01/2007 | Serial Step | 3.000% | 3.000% | 305,000.00 | 100.000% | 305,000.00 |
| 06/01/2008 | Serial Step | 3.000% | 3.000% | 320,000.00 | 100.000% | 320,000.00 |
| 06/01/2009 | Serial Step | 3.000% | 3.000% | 335,000.00 | 100.000% | 335,000.00 |
| 06/01/2010 | Serial Step | 3.000% | 3.102% | 345,000.00 | 99.500% | 343,275.00 |
| 06/01/2011 | Serial Step | 3.000% | 3.087% | 360,000.00 | 99.500% | 358,200.00 |
| 06/01/2012 | Serial Step | 3.000% | 3.077% | 370,000.00 | 99.500% | 368,150.00 |
| 06/01/2013 | Serial Step | 3.000% | 3.068% | 215,000.00 | 99.500% | 213,925.00 |

Series 2005 B Bonds

| Maturity | Type of Bond | Coupon | Yield | Maturity Value | Price | Dollar Price |
|---|---|---|---|---|---|---|
| 06/01/2005 | Serial Step | 3.000% | 3.000% | 105,000.00 | 100.000% | 105,000.00 |
| 06/01/2006 | Serial Step | 3.500% | 3.500% | 300,000.00 | 100.000% | 300,000.00 |
| 06/01/2007 | Serial Step | 3.700% | 3.700% | 305,000.00 | 100.000% | 305,000.00 |
| 06/01/2008 | Serial Step | 3.900% | 3.900% | 320,000.00 | 100.000% | 320,000.00 |
| 06/01/2009 | Serial Step | 4.000% | 4.000% | 335,000.00 | 100.000% | 335,000.00 |
| 06/01/2010 | Serial Step | 4.100% | 4.208% | 345,000.00 | 99.500% | 343,275.00 |
| 06/01/2011 | Serial Step | 4.200% | 4.292% | 360,000.00 | 99.500% | 358,200.00 |
| 06/01/2012 | Serial Step | 4.300% | 4.381% | 370,000.00 | 99.500% | 368,150.00 |
| 06/01/2013 | Serial Step | 4.400% | 4.473% | 215,000.00 | 99.500% | 213,925.00 |

This Preliminary Official Statement and the information contained herein are subject to completion and amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy. Nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction

# PRELIMINARY OFFICIAL STATEMENT DATED FEBRUARY 2, 2005

NEW ISSUE-Full Book Entry

*In the opinion of Bond Counsel, interest on the Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes") and the Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds" and, together with the Series 2005 Notes, the "Bonds") are excludable from the gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and such interest will not be treated as a preference item for purposes of the alternative minimum tax imposed under the Code with respect to individuals and corporations. Under the Code, however, such interest is included in the adjusted current earnings of a corporation for the purposes of computing the alternative minimum tax. In addition, under the Act, the Bonds and the interest thereon are exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof (see,* "TAX EXEMPTION" *herein).*

## $2,620,000*
## THE CITY OF CHARLESTON, WEST VIRGINIA
## PARKING SYSTEM BOND ANTICIPATION NOTES, SERIES 2005

## AND
## WHEN, AS AND IF ISSUED**

## $2,620,000*
## THE CITY OF CHARLESTON, WEST VIRGINIA
## PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B

**Dated:** February 1, 2005, as to the Series 2005 Notes
April 1, 2005**, as to the Series 2005 B Bonds

**Due:** As shown on inside cover

The Bonds will be issued in fully registered form only and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York. DTC will act as securities depository for the Bonds. Individual purchases will be made in book-entry form only in the principal amount of five thousand dollars ($5,000) or integral multiples thereof. Purchasers of the Bonds will not receive certificates representing their interests in the Bonds. See "DESCRIPTION OF BONDS—Book-Entry Only System" herein.

The Bonds will be issued for the purpose of refinancing, together with other funds available therefore, the existing debt incurred in funding or refunding the construction of a portion of a municipal parking system, funding reserve accounts and paying costs of issuance. The proceeds of the Series 2005 Notes will be used to defease and refund The City of Charleston (the "City") Parking System Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds"), dated June 1, 1993, issued in the original principal amount of $5,235,000 and currently outstanding in the principal amount of $3,000,000. The Series 2005 B Bonds, when, as and if issued, will redeem the Series 2005 Notes.

The Series 2005 Notes will be unsecured. The Series 2005 B Bonds will be secured by a lien on the net revenue of the City's parking system (the "Parking System"), on parity with the City's proposed $8,935,000 Parking System Refunding Revenue Bonds, Series 2005 A Bonds (the "Series 2005 A Bonds"), and a statutory mortgage lien on the Parking System. See, "FINANCING PLAN" herein.

Interest on the Series 2005 Notes will accrue from February 1, 2005, and will be payable on June 1 and December 1 of each year beginning June 1, 2005, and principal shall be payable annually on June 1 of each year beginning June 1, 2005. Interest on the Series 2005 B Bonds, if issued, will accrue from April 1, 2005, and will be payable on June 1 and December 1 of each year beginning June 1, 2005, and principal shall be payable annually on June 1 of each year beginning June 1, 2005. The principal of and interest on the Bonds are payable by the Paying Agent to DTC, which will in turn remit such principal and interest to its Participants for subsequent distribution to the Beneficial Owners of the Bonds, as described herein.

The Series 2005 Notes are subject to optional and mandatory redemption and mandatory tender as more fully described herein. The Series 2000B Bonds are subject to optional and mandatory redemption as more fully described herein. (see "DESCRIPTION OF BONDS").

This cover page contains certain information for quick reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain an informative investment decision.

THE SERIES 2005 NOTES ARE UNSECURED AND ARE PAYABLE SOLELY FROM THE PROCEEDS OF THE SERIES 2005 B BONDS, WHEN, AS AND IF ISSUED, ARE NOT SECURED BY THE NET REVENUES OF THE PARKING SYSTEM, AND DO NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE CITY OF CHARLESTON, WEST VIRGINIA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS OR LIMITATIONS.

THE SERIES 2005 B BONDS, IF ISSUED, WILL BE PAYABLE FROM AND SECURED BY A LIEN, ON PARITY WITH THE SERIES 2005 A BONDS, ON THE NET REVENUES OF THE PARKING SYSTEM DERIVED FROM THE OPERATION OF THE PARKING SYSTEM, AND DO NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE CITY OF CHARLESTON, WEST VIRGINIA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS OR LIMITATIONS.

The Series 2005 Notes and the Series 2005 B Bonds are offered when, as and if issued and received, subject to the approval of their legality by Jackson Kelly PLLC, Charleston, West Virginia, Bond Counsel, and to certain other conditions. Certain legal matters will be passed on for the City by Steptoe & Johnson, PLLC, Charleston, West Virginia, and for the Underwriters by Goodwin & Goodwin, LLP, Charleston, West Virginia. It is expected that the Series 2005 Notes will be available for delivery at DTC, New York, New York, on or about February __, 2005. It is expected that the Series 2005 B Bonds, when, as and if issued, will be available for delivery at DTC, New York, New York, on or about April __, 2005.

(Maturity Schedule on Inside Cover)

**Crews & Associates, Inc.** **Ferris, Baker Watts, Incorporated**

Dated: February __, 2005

---

* Preliminary, subject to change.

** The Series 2005 B Bonds, if issued, shall be dated April 1, 2005.

## MATURITY SCHEDULE

Dated: February 1, 2005 Due: June 1, as shown below

SERIES 2005 NOTES
MATURITY, AMOUNT, INTEREST RATE AND PRICE OR YIELD*
$_,___,000 Serial Notes

| Principal Maturity | Interest Amount | Price or Rate | Yield |
|---|---|---|---|
| 2005 | $___,000 | ____% | _____% |
| 2006 | $___,000 | ____% | _____% |
| 2007 | $___,000 | ____% | _____% |
| 2008 | $___,000 | ____% | _____% |
| 2009 | $___,000 | ____% | _____% |
| 2010 | $___,000 | ____% | _____% |
| 2011 | $___,000 | ____% | _____% |
| 2012 | $___,000 | ____% | _____% |

$_,___,000 __% Term Note Due June 1, 20__ Price ___%
$_,___,000 __% Term Note Due June 1, 2013 Price ___%
(accrued interest to be added)

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Dated: April 1, 2005 Due: June 1, as shown below

SERIES 2005 B BONDS**
MATURITY, AMOUNT, INTEREST RATE AND PRICE OR YIELD*
$_,___,000 Serial Bonds

| Principal Maturity | Interest Amount | Price or Rate | Yield |
|---|---|---|---|
| 2005 | $___,000 | ____% | _____% |
| 2006 | $___,000 | ____% | _____% |
| 2007 | $___,000 | ____% | _____% |
| 2008 | $___,000 | ____% | _____% |
| 2009 | $___,000 | ____% | _____% |
| 2010 | $___,000 | ____% | _____% |
| 2011 | $___,000 | ____% | _____% |
| 2012 | $___,000 | ____% | _____% |

$_,___,000 __% Term Bond Due June 1, 20__ Price ___%
$_,___,000 __% Term Bond Due June 1, 2013 Price ___%
(accrued interest to be added)

---

* Preliminary, subject to change.
** When, as and if issued.

THE CITY OF CHARLESTON, WEST VIRGINIA

MAYOR

Danny Jones

CITY COUNCIL

Patrick Jones
William Hanna
James "Moses" Lanham
Rev. James Ealy
Teresa "Tricky" Reed
Edward Talkington*
Paul James Monroe
Bob White
Betty Morton
Archie Chestnut
Marc Weintraub*
Jim Harris, Jr.
Linda M. Nielsen*
Jack E. Harrison
David Kent Higgins
Brenda H. Robertson
Bobby Reishman*
John Miller, Jr.*
Ditty L. Markham
Cheryle Hall
Michael Clowser
J. Thomas Lane*
Charles W. Loeb, Jr.*
Jerry L. Ware
Harry Deitzler*
Mark A Sadd*
Mary Jean Davis

CITY ADMINISTRATION

James Reishman, City Clerk
Victor Grigoraci, Treasurer
Kimberly B. Weber, City Attorney

*Denotes members of the Parking Committee.

The Bonds are exempt from registration under the Securities Act of 1933. As obligations of a political subdivision of the State of West Virginia, the Bonds are also exempt from registration under the securities laws of West Virginia. No dealer, broker, salesman or other person has been authorized by the City or the Underwriter to give any information or to make any representations, other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information and expressions of opinion herein have been obtained from the City and other sources deemed to be reliable but are not guaranteed as to accuracy or completeness by, and are not to be construed as representations of, the Underwriter. The information herein is subject to change without notice. Neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the City or the Parking System since the date hereof.

**IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET, SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.**

Table of Contents

Page

Page


INTRODUCTION ..... 1
FINANCING PLAN ..... 3
ESTIMATED SOURCES AND USES OF FUNDS ..... 3
DESCRIPTION OF BONDS ..... 5
ADDITIONAL SECURITY FOR THE SERIES 2005 B BONDS ..... 11
THE PARKING SYSTEM ..... 14
FINANCIAL OPERATIONS ..... 15
BANKRUTPCY ..... 17
LITIGATION ..... 17
NEGOTIABLE INSTRUMENTS ..... 17
FINANCIAL STATEMENTS ..... 17
TAX EXEMPTION ..... 18
UNDERWRITING ..... 18
VERIFICATION OF MATHEMATICAL COMPUTATIONS ..... 19
LEGAL MATTERS ..... 19
CONTINUING DISCLOSURE ..... 19
MISCELLANEOUS ..... 20

APPENDIX A-The City of Charleston .... A-1
APPENDIX B-Summary of Certain Provisions of the Bond Ordinance ..... B-1
APPENDIX C-Audited Financial Statements of City of Charleston ..... C-1
APPENDIX D –Form of Approving Bond Counsel Opinion ..... D-1
APPENDIX E-Form of Continuing Disclosure Certificate ..... E-1

$2,620,000*
THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM BOND ANTICIPATION NOTES,
SERIES 2005

AND
WHEN, AS AND IF ISSUED

$2,620,000*
THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

## INTRODUCTION

This Official Statement, including the cover page (excluding prices), and Appendices hereto, is provided for the purpose of setting forth certain information concerning The City of Charleston, West Virginia (the "City"), the City's municipal parking system hereinafter described, the City's $2,620,000* Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes") and, when, as and if issued, the City's $2,620,000* Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds") (the Series 2005 Notes and the Series 2005 B Bonds, collectively, the "Bonds"). The Bonds are being issued pursuant to the constitution and laws of the State of West Virginia (the "State"), specifically Chapter 8, Article 12, Chapter 8, Article 16 and Chapter 13, Article 2E (collectively, the "Act"), of the Code of West Virginia, 1931, as amended, and an Ordinance passed by City Council of the City on January 18, 2005, effective on February 7, 2005, and a supplemental resolution adopted on February 7, 2005 (the "Supplemental Resolution" and together, the "Ordinance" or "Bond Ordinance").

The Series 2005 Notes, together with other funds available therefore, are being issued to provide funds to defease and refund the City's Parking System Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds"), dated June 1, 1993, issued in the original principal amount of $5,235,000 and currently outstanding in the principal amount of $3,000,000 (the "1993 Bonds"), fund debt service reserve funds and pay the costs of issuance thereof. See "FINANCING PLAN" and "ESTIMATED SOURCES AND USES OF FUNDS". The 1993 Bonds were issued to finance or refinance the construction of a portion of the City's municipal parking facilities.

* Preliminary, subject to change.

**THE SERIES 2005 NOTES ARE UNSECURED AND PAYABLE SOLELY FROM THE PROCEEDS OF THE SERIES 2005 B BONDS, WHEN, AS AND IF ISSUED, ARE NOT SECURED BY THE NET REVENUES OF THE PARKING SYSTEM, AND DO NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE CITY OF CHARLESTON, WEST VIRGINIA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS OR LIMITATIONS.**

The Series 2005 B Bonds, when, as and if issued, will be secured by a lien on the net revenue of the City's parking system, as defined below, and by a statutory mortgage lien on the Parking System. The Series 2005 B Bonds will be issued on parity with the City's proposed $8,935,000* Parking System Refunding Revenue Bonds, Series 2005 A (the "Series 2005 A Bonds"), which, together with other funds available therefore, will be issued to provide funds to defease and refund the City's Parking System Revenue Bonds, Series 1994 A, dated December 15, 1994, issued in the original principal amount of $4,545,000, and currently outstanding in the principal amount of $3,720,000, Parking System Subordinate Revenue Bonds, Series 1994 B, dated December 15, 1994, issued in the original principal amount of $5,455,000, and currently outstanding in the principal amount of $4,035,000 and Parking System Subordinate Revenue Bonds, Series 1995, dated January 1, 1995, issued in the original principal amount of $1,620,000, and currently outstanding in the principal amount of $1,195,000 (collectively, the "Series 1994 and Series 1995 Bonds"). See, "FINANCING PLAN" herein.

Upon issuance of the Series 2005 A Bonds, the Series 2005 B Bonds, if issued, will be payable from and secured by the Net Revenues, as defined in the Ordinance, to be derived from the existing on-street and off-street parking system of the City, together with any extensions and improvements thereto (collectively, the "Parking System"), by a statutory mortgage lien on the Parking System, and from funds on deposit in the Series 2005 B Bonds Reserve Account. The Series 2005 B Bonds will not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, and the City shall not be obligated to pay the Series 2005 B Bonds or any premium or the interest thereon except from such Net Revenues and such funds on deposit. Pursuant to the Ordinance, the City has covenanted and agreed to fix, establish and maintain such rates and collect such fees, rentals or other charges for the services and facilities of the Parking System, and revise the same from time to time whenever necessary, to always provide revenues in each fiscal year at least sufficient to pay one hundred fifteen percent (115%) of the largest amount of principal and interest maturing and becoming due on the Series 2005 B Bonds then outstanding in any succeeding fiscal year, in addition to paying, as the same become due, the necessary expenses of repair (including replacement), maintenance and operation of the Parking System in each fiscal year, and all obligations or indebtedness other than the Series 2005 B Bonds payable out of revenues of the Parking System in such fiscal year. See "Additional Security for the Series 2005 B Bonds - Rate Covenant."

* Preliminary, subject to change.

Brief descriptions of the Bonds, the Ordinance, the Parking System, Financial Operations, the City and certain provisions of the Act are set forth in this Official Statement as well as other information contained in the appendices hereto. Such descriptions and information do not purport to be comprehensive or definitive. All references herein to the Ordinance, provisions of the Act, or other applicable laws of the State are qualified in their entirety by reference to each such document. Reference herein to the Bonds are qualified in their entirety by reference to the form thereof included in the Ordinance and the information with respect thereto included in the aforesaid documents.

## FINANCING PLAN

The proceeds of the Series 2005 Notes will be used to refund and defease the 1993 Bonds. The Series 2005 A Bonds will be issued to refund and defease the Series 1994 and Series 1995 Bonds. Following the refunding and defeasance of the Series 1994 and Series 1995 Bonds, the Series 2005 Notes shall be called by the City, and the City shall deliver the Series 2005 B Bonds in exchange for the Notes. The Act authorizes the imposition of a statutory mortgage lien on the Parking System.

In addition to debt service savings, the refinancing has other benefits that are important to the operation of the Parking System. At closing on the issuance of the Series 2005 A Bonds, the City will transfer $1,000,000 from the Repair, Maintenance and Operation Fund that was established upon issuance of the 1993 Bonds. (Following the issuance of the Series 2005 A Bonds, the amount required to be on deposit in the Repair, Maintenance and Operation Fund will be $200,000 as required by the Ordinance.) The funds will be used to acquire two (2) additional parking lots, containing a total of two hundred twenty-eight (228) parking spaces, in the vicinity of a new baseball stadium currently under construction, which will be added to the Parking System. The additional revenues from the new parking lots will enhance the City's ability to meet the debt service coverage requirement. Finally, the letter of credit requirement and the associated annual letter of credit fees that are applicable to the Series 1994 and 1995 Bonds will be eliminated upon the issuance of the Series 2005 A Bonds.

The cost of refunding and defeasing the 1993 Bonds is $3,064,312.64. The City plans to fund the Series 2005 B Bonds Reserve Account in full at closing. A portion of the proceeds of the Series 2005 Notes sufficient to refund and defease the 1993 Bonds will be deposited at closing with the West Virginia Municipal Bond Commission, as Escrow Agent, and will be applied to refund and defease the 1993 Bonds. Verification of certain mathematical computations relating to the payment from the Escrow Fund of principal of, premium, if any, and interest on the 1993 Bonds until the date the Notes will be exchanged, and the refunding of the 1993 Bonds is completed, will be performed by Smith, Cochran & Hicks, P.L.L.C., Charleston, West Virginia, certified public accountants.

## ESTIMATED SOURCES AND USES OF FUNDS

The sources and uses of funds, exclusive of accrued interest, are estimated to be as follows:

Series 2005 Note

Sources of Funds

| | |
|---|---|
| Principal Amount of Note | $_____ |
| Transfer from 1993 Sinking Fund | ___,___.__ |
| Transfer from 1993 Debt Service Reserve Fund | ___,___.__ |
| Total | $_,___,___.__ |

Uses of Funds

| | |
|---|---|
| Series 1993 Escrow Fund (1) | $_,___,___.__ |
| Original Issue Discount | |
| Debt Service Reserve Requirement (2) | |
| Underwriters' Discount | |
| Cost of Issuance | |
| Total | $_,___,___.__ |

(1) The Series 1993 Escrow Fund will be held by the Escrow Agent and disbursed as required by the Ordinance for the repayment of the 1993 Bonds.

(2) The Debt Service Reserve Requirement is the amount equal to the maximum amount of principal and interest which will come due on the Series 2005 B Bonds in any fiscal year, when, as and if issued.

Series 2005 B Bonds, When, As and If Issued (1)

Sources of Funds

| | |
|---|---|
| Principal Amount of Series 2005 B Bonds | $_____ |
| Total | $_,___,___.__ |

Uses of Funds

| | |
|---|---|
| Note Repayment Account (2) | $_,___,___.__ |
| Debt Service Reserve Requirement (3) | |
| Total | $_,___,___.__ |

(1) This table assumes that the Series 2005 B Bonds will be issued. If the Series 2005 B Bonds are issued, the Series 2005 Notes shall be subject to mandatory tender to the Paying Agent on or about April 1, 2005, at a price of par plus accrued interest to such date, such amounts

payable from funds on deposit with the Escrow Agent.

(2) The Note Repayment Account will be held by the Escrow Agent and disbursed as required by the Ordinance for the repayment of the Notes.

(3) The Debt Service Reserve Requirement is an amount equal to the maximum amount of principal and interest which will come due on the Series 2005 B Bonds in any fiscal year.

## DESCRIPTION OF BONDS

### The Bonds

The Bonds are available in book-entry form only. See "Book-Entry Only System" below. So long as Cede & Co. is the registered owner of the Bonds as nominee of The Depository Trust Company, New York, New York, references herein to the Bondholders or registered owners of the Bonds shall mean Cede & Co. and shall not mean the beneficial owners of the Bonds. The West Virginia Municipal Bond Commission, Charleston, West Virginia, shall be the Paying Agent ("Paying Agent") and United Bank, Inc., in Charleston, West Virginia, shall be the Registrar for the Bonds (the "Registrar").

The principal of, premium, if any, and interest on the Bonds will be payable at the office of the Paying Agent.

The Series 2005 Notes will be dated February 1, 2005. When, as and if issued, the Series 2005 B Bonds will be dated April 1, 2005.

Interest on the Series 2005 Notes will accrue from February 1, 2005, and will be payable on June 1 and December 1 of each year beginning June 1, 2005, and principal shall be payable annually on June 1 of each year beginning June 1, 2005. Subject to the issuance of the Series 2005 B Bonds, the Series 2005 Notes will mature on April 1, 2005. The Series 2005 B Bonds, when, as and if issued, will bear interest at the rates and mature in the amounts set forth on the cover page of this Official Statement. Interest on the Series 2005 B Bonds will accrue from April 1, 2005, and will be payable on June 1 and December 1 of each year beginning June 1, 2005, and principal shall be payable annually on June 1 of each year beginning June 1, 2005.

The Series 2005 B Bonds shall be payable as to principal at the office of the Paying Agent in any coin or currency which on the respective date of payment of principal and interest, is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2005 B Bonds shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address that appears on the books of the Registrar or, in the event of a default in the payment on the Series 2005 B Bonds, that special record date to be fixed by the Registrar by notice given to the Registered Owners not less than ten (10) days prior to said special record date (the "Special Record Date") or, if requested in the case of such an owner of $1,000,000 or more in principal amount of Series 2005 B Bonds, by wire transfer to a domestic bank account specified in writing at least five (5) days prior to the Record Date by such owner.

**Mandatory Tender of Note**

By its purchase of the Notes, each Notes holder shall unconditionally and irrevocably agree, upon the authentication and issuance of the Series 2005 B Bonds in accordance with the provisions of the Ordinance and delivery of the Series 2005 B Bonds Bond Counsel Opinion as provided in the Ordinance, and in substantially the form attached as Appendix D hereto, on or about April 1, 2005, to tender on such date its Notes in exchange for the Series 2005 B Bonds in a principal amount equal to the then Outstanding principal amount of its Notes. If the exchange of Notes for Series 2005 B Bonds has not been completed by April 1, 2005, the City shall have a period of sixty (60) days within which to establish a new date for such tender and to complete the same.

**Series 2005 B Bonds - Optional Redemption**

The Series 2005 B Bonds are not subject to optional redemption prior to June 1, 20__. At the option of the City, the Series 2005 B Bonds will be subject to redemption prior to maturity on or after June 1, 20__, as a whole at any time and in part on any interest payment date, in inverse order of maturity and by random selection within maturities if less than all of any maturity, at a redemption price (expressed as a percentage of the principal amount) set forth below, plus interest accrued to the date fixed for redemption:

| Period During Which Redeemed | Redemption Price |
|---|---|
| June 1, 20__ through May 31, 20__ | ___% |
| June 1, 20__ through May 31, 20__ | ___% |
| June 1, 20__ and thereafter | ___% |

**Mandatory Sinking Fund Redemption**

The Series 2005 Notes maturing on June 1, 20__ ("Term Note"), is subject to annual mandatory redemption prior to maturity by random selection in accordance with the requirements of the Bond Ordinance at the principal amount thereof plus interest accrued to the date fixed for redemption, on June 1 of each of the years and in the principal amount set forth below:

20__ Term Note

| Year | Principal Amount |
|---|---|
| 20__ | $___,000 |
| 20__ | ___,000 |

The Series 2005 B Bonds maturing on June 1, 20__ ("Term Bonds"), are subject to annual mandatory redemption prior to maturity by random selection in accordance with the requirements of the Bond Ordinance at the principal amount thereof plus interest accrued to the date fixed for

redemption, on June 1 of each of the years and in the principal amount set forth below:

20__ Term Bonds

| Year | Principal Amount |
|---|---|
| 20__ | $___,000 |
| 20__ | ___,000 |

**Manner of Redemption and Tender**

With respect to mandatory redemption of the Notes, within seven (7) business days following the issuance and delivery of the Series 2005 B Bonds under the Ordinance or at least sixteen (16) days following the refunding and defeasance of the Series 1994 and Series 1995 Bonds, the Paying Agent will mail to the persons who were Notes holders immediately prior to the issuance of the Series 2005 B Bonds by first class mail, postage prepaid, at the address of each Notes holder shown on the Bond Register whose Notes have been redeemed under the mandatory redemption provisions of the Ordinance and for whom a corresponding Series 2005 B Bond has been purchased under the Ordinance, a notice setting forth the information provided in the Ordinance with respect to the Notes redeemed and advising such holder that upon the surrender of such holders' Notes to the Paying Agent, the Paying Agent will deliver to such Notes holder the Series 2005 B Bond purchased on its behalf. Such notice shall provide the address of the Paying Agent to which Notes are to be presented.

**Notice of Redemption**

The Paying Agent shall cause notice of any redemption of Series 2005 B Bonds to be mailed by first class mail to the Owners of all Series 2005 B Bonds to be redeemed at the addresses thereof appearing in the Registration Books. Each such notice shall (i) be mailed not more than 60 days nor less than 30 days prior to the redemption date, (ii) identify the Series 2005 B Bonds to be redeemed (specifying the CUSIP numbers, if any, assigned to the Series 2005 B Bonds), (iii) specify the redemption date and the Redemption Price, and (iv) state that on the redemption date the Series 2005 B Bonds called for redemption will be payable at the principal corporate trust office of the Paying Agent, that from that date the Series 2005 B Bonds called for redemption will be deemed to be paid, and interest will cease to accrue, and that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein. Failure to give such notice of redemption (including any failure to mail such notice) shall not affect the validity of the redemption proceedings for any other Series 2005 B Bonds for which notice was properly given.

Under the requirements of the Ordinance, the City cannot redeem all or any part of the Series 2005 B Bonds unless funds are available to make such payment prior to the notice of redemption.

**Book-Entry Only System**

The Depository Trust Company, New York, New York ("DTC"), will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered Bond certificate will be issued for each maturity of each respective series of Bonds in the aggregate principal amount of each maturity and will be deposited with DTC.

DTC is a limited-purpose trust company organized under New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds securities that its participants ("Participants") deposit with DTC. DTC also facilitates the settlement among Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Rules applicable to DTC and its Participants are on file with the United States Securities and Exchange Commission.

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmation providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interest in the Bonds are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of Bonds with DTC and their registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to Cede & Co. If less than all of the Bonds within a series are being redeemed. DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. will consent or vote with respect to Bonds. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, or redemption of, and interest payments on the Bonds will be made to DTC. DTC's practice is to credit Direct Participants' accounts on the payable date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on the payable date. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Paying Agent, or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, redemption premium, if any, and interest to DTC is the responsibility of the City or the Paying Agent, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to the City or the Paying Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Bonds certificates are required to be printed and delivered.

The City may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the City believes to be reliable, but the City takes no responsibility for the accuracy thereof.

NEITHER THE CITY, THE UNDERWRITER NOR THE PAYING AGENT WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO PARTICIPANTS, TO INDIRECT PARTICIPANTS OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (I) THE ACCURACY OR ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT; (II) THE PAYMENT BY DTC OR ANY PARTICIPANT

OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OF, OR PREMIUM, IF ANY, OR INTEREST ON, THE BONDS; (III) ANY NOTICE WHICH IS PERMITTED OR REQUIRED TO BE GIVEN BY DTC TO BONDHOLDERS; (IV) ANY CONSENT GIVEN BY DTC OR OTHER ACTION TAKEN BY DTC AS BONDHOLDER; OR (V) THE SELECTION BY DTC OR ANY PARTICIPANT OR INDIRECT PARTICIPANT OF ANY BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE BONDS.

So long as the Bonds are held by DTC under a book-entry system, the Paying Agent will send any notice of redemption or other notices with respect to the Bonds required or permitted to be given under the Ordinance only to DTC. Any failure of DTC to advise any Participant, or of any Participant to notify any Indirect Participant or any Beneficial Owner of any such notice and its content or effect will not affect the validity of the proceedings for the redemption of the Bonds or of any other action permitted upon such notice. If fewer than all of the Bonds are selected for redemption, DTC will select the particular account of Participants to which the amount of such redemption will be credited in accordance with DTC's own rules or other agreements with Participants; Participants may then credit such redemption to the particular accounts of Beneficial Owners for whom such Participants act as nominee accordingly. Any such selection of Participants and Beneficial Owners to which any such partial redemption will be credited will not be governed by the Ordinance and will not be made by the City or the Paying Agent.

**Issuance of Additional Bonds**

No parity additional bonds as defined in this subsection, payable out of the Net Revenues of the Parking System, shall be issued after the issuance of any Bonds pursuant to the Ordinance, except under the conditions and in the manner herein provided.

No such parity additional bonds shall be issued unless the Net Revenues derived from the Parking System during any twelve (12) consecutive months during the period of eighteen (18) months immediately prior to the issuance of the additional bonds then proposed to be issued, as set forth in a certificate of an Independent Accountant, appointed by the City, filed with the City Clerk, shall be not less than one hundred fifteen per centum (115%) of the largest amount of principal and interest which will mature and become due in any succeeding year on the Bonds issued pursuant to the Ordinance then Outstanding and on any parity additional bonds theretofore issued and then Outstanding, and on any other obligations then Outstanding which are payable from the Net Revenues of the Parking System, or any part thereof, and on the parity additional bonds then proposed to be issued; provided, however, that if the parity additional bonds are refunding bonds to achieve a debt service savings, then such test shall not apply.

Such parity additional bonds shall be issued only for the financing of the construction and acquisition of additions, extensions and improvements to the Parking System, and all revenues derived therefrom shall be deposited in the Revenue Fund created by the Ordinance or for refunding all or any part of any Bonds Outstanding hereunder.

The term "parity additional bonds" as used in this subsection, shall be deemed to mean additional bonds issued under the provisions and within the limitations of this subsection, payable from the Net Revenues of the Parking System on parity with Bonds originally authorized

and issued pursuant to the Ordinance. Such parity additional bonds shall be deemed to have been issued pursuant to the Ordinance, and all of the covenants, agreements and other provisions of the Ordinance (except as to details of such parity additional bonds inconsistent therewith) shall be for the equal benefit, protection and security of the Registered Owners of any Bonds originally authorized and issued pursuant to the Ordinance and the holders of any parity additional bonds subsequently created within the limits of and in compliance with this subsection. All of such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the Parking System and their source and security for payment from said revenues without preference of any Bond, over any other. The City shall comply fully with all the increased payments into the various funds created in the Ordinance required for such parity additional Bonds, in addition to the payments required for Bonds originally issued pursuant to the Ordinance.

The term "parity additional bonds", as used in the Ordinance shall not be deemed to include bonds, notes, certificates, or any other obligations subsequently issued, the lien of which on the Net Revenues of the Parking System, or any part thereof, is subject to the prior and superior lien on such revenues of the Bonds issued pursuant to the Ordinance, and the City shall not issue any obligations whatsoever payable from the Net Revenues of the Parking System, or for payment from such revenues with Bonds issued pursuant to the Ordinance, except in the manner and under the conditions provided in Section 5.09 thereof.

No parity additional bonds, as defined in the Ordinance, shall be issued at any time, however, unless all of the payments into the respective funds provided for in the Ordinance shall have been made in full to the date of issuance of such parity additional bonds, and the City shall have fully complied with all covenants, agreements and terms of the Ordinance.

## ADDITIONAL SECURITY FOR THE SERIES 2005 B BONDS

The Series 2005 B Bonds will be secured by the Bond Ordinance with a lien on the Net Revenues of the Parking System on parity with the Series 2005 A Bonds. In addition, the Act imposes a statutory mortgage lien on the Parking System.

NEITHER THE FULL FAITH AND CREDIT, NOR THE TAXING POWER OF THE CITY, NOR ANY FUNDS OTHER THAN THE NET REVENUES OF THE PARKING SYSTEM AND THE RESPECTIVE RESERVE ACCOUNTS, ARE PLEDGED TO THE PAYMENT OF THE BONDS, AND THE BONDS DO NOT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION.

### Application of Revenues

The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the City in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner provided in the Ordinance. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(A) All revenues deposited in the Revenue Fund shall be used first to pay current Operating Expenses of the Parking System.

(B) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) commencing 6 months prior to the first interest payment date of the Series 2005 A Bonds, a sum equal to 1/6th of the amount of interest which will become due on the Series 2005 A Bonds on the next ensuing semiannual interest payment date for deposit in the Series 2005 A Bonds Sinking Fund; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2005 A Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2005 A Bonds deposited therein; and (ii) commencing 6 months prior to the first interest payment date of the Series 2005 B Bonds, a sum equal to 1/6th of the amount of interest which will become due on the Series 2005 B Bonds on the next ensuing semiannual interest payment date for deposit in the Series 2005 B Bonds Sinking Fund; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2005 B Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2005 B Bonds deposited therein.

(C) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission for deposit into the respective Sinking Fund (i) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 2005 A Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 2005 A Bonds on the next ensuing annual principal payment date or mandatory Redemption Date for deposit in the Series 2005 A Bonds Sinking Fund and in the Series 2005 A Bonds Redemption Account in the case of the Term Bonds which are to be redeemed; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing annual principal payment date or mandatory Redemption Date is less than or greater than 12 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date; and (ii) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 2005 B Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 2005 B Bonds on the next ensuing principal payment date or mandatory Redemption Date for deposit in the Series 2005 B Bonds Sinking Fund and in the Series 2005 B Bonds Redemption Account in the case of the Term Bonds which are to be redeemed; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing annual principal payment date or

mandatory Redemption Date is less than or greater than 12 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date.

(D) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) an amount to be deposited in the Series 2005 A Bonds Reserve Account which will be sufficient to remedy any decrease in value of the Series 2005 A Bonds Reserve Account below the Series 2005 A Bonds Reserve Requirement or any withdrawal from the Series 2005 A Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2005 A Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2005 A Bonds Reserve Account is less than the Series 2005 A Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2005 A Bonds Reserve Account for deposit into the Series 2005 A Bonds Sinking Fund; and (ii) an amount to be deposited in the Series 2005 B Bonds Reserve Account which will be sufficient to remedy any decrease in value of the Series 2005 B Bonds Reserve Account below the Series 2005 B Bonds Reserve Requirement or any withdrawal from the Series 2005 B Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2005 B Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2005 B Bonds Reserve Account is less than the Series 2005 B Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2005 B Bonds Reserve Account for deposit into the Series 2005 B Bonds Sinking Fund. To the extent Net Revenues and any other legally available funds are available therefor, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2005 A Bonds Reserve Account or the Series 2005 B Bonds Reserve Account to an amount equal to the respective Reserve Requirement; provided, that no payments shall be required to be made into the such Reserve Accounts whenever and as long as the amounts deposited therein shall be equal to the respective Reserve Requirement.

(E) The City shall next, each month after all payments required above have been made, transfer the balance remaining in the Revenue Fund to the Repair, Maintenance and Operation Fund. All funds in the Repair, Maintenance and Operation Fund shall be kept apart from all other funds of the City or of the Depository Bank and shall be invested and reinvested in as provided in the Ordinance. Withdrawals and disbursements may be made from the Repair, Maintenance and Operation Fund as provided in Section 3.04 of the Ordinance.

(F) Moneys in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall be come due. Moneys in the Series 2005 A Bonds Reserve Account and the Series 2005 B Bonds Reserve Account shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall come due, when other moneys in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund are insufficient therefor, and for no other purpose, except for permitted transfers to

the respective Rebate Fund.

**Rate Covenant**

The City will fix, establish and maintain such rates and collect such fees, rentals or other charges for the services and facilities of the Parking System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year at least sufficient to pay, one hundred fifteen per centum (115%) of the largest amount of principal and interest maturing and becoming due on the Bonds then Outstanding in any succeeding fiscal year, in addition to paying, as the same shall become due, the necessary expense of repair (including replacement), maintenance and operation of the Parking System in each fiscal year, and all obligations or indebtedness other than the Bonds payable out of revenues of the Parking System in such fiscal year, and that such rates, fees, rentals or other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

## THE PARKING SYSTEM

The Parking System consists of 6 parking garages that contain 3,474 parking spaces. Of the spaces available in the garages, 1,827 are rented to the general public on a monthly basis. The City Parking System also has 1,050 metered parking spaces in its garages and on the streets. The Parking System also includes 7 parking lots, leased from the State of West Virginia, that contain 730 parking spaces. The lots are used for special events parking. The Parking System will acquire two (2) additional parking lots, containing a total of two hundred twenty-eight (228) parking spaces, in the vicinity of a new baseball stadium currently under construction.

The monthly parking charge ranges from $60.00 - $70.00, with some reduced rates available at certain garages for certain users. The charges for on-street metered parking spaces vary based upon length of term and location of parking space. The fines for overtime parking and other parking violations are as follows: For overtime parking, the fine is $5.00 if paid within 24 hours and $25.00 if paid thereafter; for parking illegally in a handicapped zone, the fine is $75.00; and for all other non-moving violations, the amount of any fine varies.

Under the Act, the responsibility for the operation and maintenance of the Parking System is given to the City, and the City is empowered to delegate such responsibility to a board. Pursuant to such authority, the City Council appointed a special committee designated the Parking Facilities Committee, being composed of the Mayor, City Manager and the Finance Committee of City Council. The Parking Facilities Committee promulgates rules and regulations governing the usage of all the parking facilities. The Parking System staff has the responsibility of collecting, receiving and depositing funds received from the operation of the Parking System.

Mr. Gary Taylor, the Parking Director, oversees the daily operations of the Parking System. He oversees the rental of spaces, collects monthly rentals and answers parking complaints. He has served in this position since July 2004.

In addition to parking lots and metered spaces of the Parking System, there are other

parking facilities built and operated in conjunction with the Town Center Mall, banks and/or office buildings, the Kanawha County Commission and hotels. These facilities, although primarily for their respective tenants and customers, provide some public parking spaces. There are also privately operated surface lots which may be utilized by the general public. The City believes that it provides parking facilities and services at prices competitive with those of other providers of parking facilities.

## FINANCIAL OPERATIONS

The accounts of the Parking System are maintained as a part of the general accounts of the City and are maintained in accordance with generally accepted accounting principals. The Office of the State Auditor of the State of West Virginia, Charleston, West Virginia, has audited the financial statements of the City for the year ended June 30, 2003. See APPENDIX C - Audited Financial Statements of City of Charleston. THE FINANCIAL STATEMENTS CONTAINED IN APPENDIX C ARE THE "AUDIT REPORT OF CITY OF CHARLESTON, WEST VIRGINIA FOR THE FISCAL YEAR ENDED JUNE 30, 2003".

### Operating Results

The following table is a summary of the operations of the Parking System for the fiscal year ended June 30, 2003. This summary has been complied from the respective audited financial statements and internal financial records for fiscal year ended June 30, 2003 but does not purport to present such data in accordance with generally accepted accounting principles.

## Parking System Operating Results Fiscal Year Ended June 30

| | Audited 2002 | Audited 2003 | Unaudited 2004 | Projections 2005 | |
|---|---|---|---|---|---|
| Operating Revenues | | | | | |
| Parking Revenues | 3,105,327 | 2,727,030 | 2,291,087 | 2,306,100 | |
| Other | 4,869 | 16,472 | 1,288,908 | 1,297,000 | |
| Total Operating Revenues | 3,110,196 | 2,743,502 | 3,579,995 | 3,603,100 | |
| Operating Expenses | | | | | |
| Personnel Costs | 1,444,653 | 1,009,614 | 1,025,735 | 1,060,291 | |
| Contractual Servicces | 0 | 459,972 | 527,404 | 532,950 | |
| Commodities | 0 | 54,559 | 56,917 | 55,000 | |
| Depreciation | 995,489 | 973,114 | 896,134 | 874,000 | |
| Total Operating Expenses | 2,440,142 | 2,497,259 | 2,506,190 | 2,522,241 | |
| Non Operating Revenues (Expenses) | | | | | |
| Interest | 122,651 | 22,463 | 14,331 | 18,000 | |
| Interest on MBC Deposits | 0 | 81,771 | 24,569 | 64,000 | |
| Gain on Sale of Fixed Assets | 0 | (2,947) | 125 | 0 | |
| Other Interest | 0 | 3,192 | (1,463) | (3,000) | |
| Interest on Bonds | (1,098,529) | (995,101) | (914,727) | (880,036) | |
| Bond Debt Service Charge | 0 | (105,301) | (99,829) | (100,000) | |
| Bad Debt | 0 | 285 | (60) | (600) | |
| Contingency | 0 | 0 | 0 | (50,158) | |
| Total Non Operating Revenues (Expenses) | (975,878) | (995,638) | (977,054) | (951,794) | |
| Net Income | (305,824) | (749,395) | 96,751 | 129,065 | |
| Plus: | | | | | |
| Depreciation | 995,489 | 973,114 | 896,134 | 874,000 | |
| Interest on Bonds | 1,098,529 | 995,101 | 914,727 | 880,036 | |
| Bond Debt Service Charge | 0 | 105,301 | 99,829 | 100,000 | |
| Revenues Available for Debt Service | 1,788,194 | 1,324,121 | 2,007,441 | 1,983,101 | |
| Debt Service on Bonds | 1,589,486 | 1,583,628 | 1,585,265 | 1,357,114 | * |
| Coverage | 1.13 | 0.84 | 1.27 | 1.46 | |

* Proposed new debt service.

*Source: City of Charleston Audits and Internal Financial Records*

THE PROJECTIONS INCLUDED UNDER OPERATING RESULTS HAVE BEEN PREPARED BY THE CITY OF CHARLESTON AND SHOULD NOT BE RELIED UPON OR CONSTRUED AS STATEMENTS OF FACT. SOME ASSUMPTIONS INEVITABLY WILL NOT MATERIALIZE AND UNANTICIPATED EVENTS AND CIRCUMSTANCES MAY

OCCUR; THEREFORE, THE ACTUAL RESULTS ACHIEVED DURING THE PERIODS FOR WHICH THE PROJECTIONS HAVE BEEN PROVIDED WILL VARY FROM THE PROJECTIONS, AND SUCH VARIATIONS MAY OR MAY NOT BE MATERIAL.

**Parking System Budget and Expenditures**

An operating budget is prepared annually by the City's Treasurer and is approved by the City's Parking Committee prior to the beginning of each new fiscal year. The operating budget is then compared to actual year-to-date revenues and expenditures on a monthly basis. The actual operating results for the Parking System through June 30, 2003, are set forth on page C-_ of Appendix C.

## BANKRUPTCY

The United States Bankruptcy Code permits political subdivisions that are insolvent or unable to meet their debts to file a petition for relief in federal bankruptcy courts if authorized by state law. Bankruptcy proceedings by the City could have additional adverse effects on Bondholders, including (a) delay in the enforcement of Bondholders' remedies, (b) subordination of the Bondholders' liens to claims of those supplying goods and services to the City after the initiation of bankruptcy proceedings and to the administrative expenses of bankruptcy proceedings and (c) imposition without the consent of all Bondholders of a reorganization plan reducing or delaying payment of the Bonds. The Bankruptcy Code contains provisions intended to insure that, in any reorganization plan not accepted by the holders of at least a majority in aggregate principal amount of the Bonds, Bondholders will have the benefit of their original lien or the "indubitable equivalent." The effect of these and other new provisions of the Bankruptcy Code cannot be predicted with any certainty and may be significantly affected by judicial interpretation.

## LITIGATION

There are no actions, suits, proceedings, inquiries or investigations at law or in equity before or by any court, public board or body, now pending or, to the best knowledge of the City, threatened or affecting the City (or, to the City's knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the validity of the Bonds, the Bond Ordinance, the Supplemental Resolution or any agreements to which the City is a party and which are a result of the issuance of the Bonds.

## NEGOTIABLE INSTRUMENTS

Pursuant to state law, the Bonds are and have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia.

## FINANCIAL STATEMENTS

Included in APPENDIX C are the audited financial statements of the City as of and for the year ended June 30, 2003, and the report with respect to the audited financial statements as of June

30, 2003, dated February 5, 2004, of the Office of the State Auditor of the State of West Virginia.

## TAX EXEMPTION

### Opinion of Bond Counsel

Bond Counsel is of the opinion that under existing statutes and court decisions of the United States of America, as currently written and applied, the interest on the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, will be excludable from the gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). In addition, such interest will not be treated as a preference item in calculating the alternative minimum tax that may be imposed with respect to individuals and corporations. Under the Code, however, interest on the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, is included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax that may be imposed with respect to corporations. Bond Counsel is of the further opinion that, under the Act, the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, and the interest thereon are exempt from direct taxation by the State of West Virginia and by any county, municipality, political subdivision or agency thereof. In its approving opinions, Bond Counsel expresses no opinion regarding other tax consequences arising with respect to the bonds.

The Code establishes certain requirements that must be met subsequent to the issuance and delivery of the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, in order that interest on the Bonds be and remain excludable from gross income under Section 103 of the Code. These requirements include, but are not limited to, requirements relating to the use, investment and expenditure of bond proceeds and the requirements that certain earnings be rebated to the federal government. The City has covenanted to comply with certain provisions and procedures, pursuant to which such requirements can be satisfied. Noncompliance with such requirements may cause interest on the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, to become includable in gross income for federal income tax purposes retroactive to the date of issuance thereof, irrespective of the date on which such noncompliance is ascertained.

## UNDERWRITING

Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (collectively, the "Underwriters") have agreed, subject to certain conditions, to purchase the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, from the City at an aggregate discount from the initial public offering prices set forth on the cover page of this Official Statement. The obligation of the Underwriters to purchase the Bonds is subject to certain terms and conditions set forth in the purchase contract entered into between the Underwriters and the City. The Bonds may be offered and sold to certain dealers, banks and others at prices lower than the initial offering prices, and such initial public offering prices may be changed, from time to time, by the Underwriters.

## VERIFICATION OF MATHEMATICAL COMPUTATIONS

Smith, Cochran & Hicks, P.L.L.C., independent certified public accountants, will (a) verify the mathematical accuracy of the arithmetical computation of the cash flow provided by the Escrow Fund; (b) verify that the projected income and principal of the securities and any cash deposited into the Escrow Fund is adequate to pay on debt service on the 1993 Bonds until February 11, 2005, and, on April 1, 2005, the redemption price of the Notes. Such verifications will be based upon information supplied to Smith, Cochran & Hicks, P.L.L.C. by the Underwriters.

## LEGAL MATTERS

Legal matters incident to the authorization and issuance of the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, by the City are subject to the approval of Jackson Kelly PLLC, Charleston, West Virginia, Bond Counsel. The proposed form of Bond Counsel's opinion is appended hereto as APPENDIX D.

Certain legal matters will be passed upon for the City by Steptoe & Johnson, PLLC, Charleston, West Virginia, and for the Underwriters by Goodwin & Goodwin, LLP, Charleston, West Virginia.

## CONTINUING DISCLOSURE

The City has agreed to an undertaking for the benefit of the Registered Owners of the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, to provide certain financial and operating information (the "Annual Information") not later than one hundred eighty (180) days following the end of the fiscal year of the City (currently June 30), commencing in 2005, and to provide the Annual Information to the Central Post Office, as defined in the Continuing Disclosure Certificate delivered by the City at closing, for delivery to each National Recognized Municipal Securities Information Repository ("National Repository") and any State Information Depository ("State Depository") and to provide notice of the occurrence of the enumerated events to the Central Post Office for delivery to each National Repository or the Municipal Securities Rulemaking Board ("MSRB") and to any State Depository. This obligation shall be evidenced by the Continuing Disclosure Certificate from the City, the form of which is attached hereto as Appendix E.

The Annual Information will consist generally of information of the type contained herein in Appendix C of the Official Statement. Any of the foregoing information may be supplied by including by specific reference information previously supplied to the Central Post Office for delivery to each National Repository and any State Depository or the Securities and Exchange Commission ("SEC"). Information will not be included by reference from any final official statement unless such final official statement is available from the MSRB.

This continuing disclosure obligation is being undertaken by the City to assist the Underwriter in complying with Rule 15c-12 promulgated by the SEC. The City has agreed to give notice in a timely manner to the Central Post Office for delivery to each National Repository, or the

MSRB, and to each State Depository of any failure to supply the requested information. However, any such failure will not constitute a default under the terms of the Bonds. Registered Owners may contact the City Manager of the City at P.O. Box 2749, Charleston, WV 25330 (304) 348-8014 for more information.

For the fiscal years ended June 30, 2001, 2002 and 2003, the City failed to provide the Annual Information to each National Repository. The problem occurred primarily because the disclosure responsibility was not specifically assigned to any individual or department after the City's 2001 bond issue. The problem was corrected on or about December 1, 2004, when the Annual Information was provided to each National Repository and to the Central Post Office. The City has taken steps to avoid a recurrence of the problem by assigning the task to the City Auditor's office.

## MISCELLANEOUS

So far as any statements made in this Official Statement involve matters of opinion or estimates, whether or not expressly stated, they are set forth as such and not as representations of fact, and no representation is made that any of such statements will be realized. Neither this Official Statement nor any statement which may have been made orally or in writing is to be construed as a contract with the Owners of the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds,.

Copies of the Ordinance, the Supplemental Resolution and other applicable documents may be obtained from the City at the following address or telephone number:

The City of Charleston
P.O. Box 2749
Charleston, WV 25330
Attention: City Manager
(304) 348-8014

or, during the period of offering the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, from the Underwriter. Ongoing financial information concerning the City and the Parking System may be obtained from the above-referenced source.

The execution and distribution of this Official Statement has been duly authorized by The City of Charleston.

THE CITY OF CHARLESTON, WEST VIRGINIA

By _____
Mayor

APPENDIX A

The City of Charleston

## Introduction

Charleston, the county seat of Kanawha County, was originally chartered in 1794 as Charles Town and changed to the present name in 1819. The city was named by George Clendenin, one of the earliest settlers, for his father, Charles Clendenin. As the capital and largest city of West Virginia, it is located in the west central part of the state, at the confluence of the Elk River and the Kanawha River. Charleston is a commercial manufacturing and distribution center for the surrounding coal, petroleum, natural gas, and metal products industries.

West Virginia is centrally located in the South Atlantic Region of the United States, bound to the North by Pennsylvania and Maryland, to the East and South by Virginia, and to the West by Kentucky and Ohio.

## Charleston History

Charleston was officially established on December 19, 1794. There were 35 people living in town at that time. The area began to grow around 1800 when salt brine deposits were found along the Kanawha River. West Virginia was officially declared a state by President Abraham Lincoln on June 20, 1863. By the end of the Civil War, the fledgling government was being formed and struggling to come together effectively. The state capital wasn't set, moving between Charleston and Wheeling until 1885.

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Source: Key to the City: usacitiesonline.com

**Population Overview**
**2000 Census**

| | Charleston | WV | US |
|---|---|---|---|
| Total population | 53,421 | 1,810,354 | 290,809,777 |
| Square miles (land) | 31.60 | 24,078 | 3,537,438 |
| Population per sq. mile | 1,690.37 | 75.10 | 79.56 |
| **Gender** | | | |
| Male | 46.6% | 48.6% | 49.1% |
| Female | 53.4% | 51.4% | 50.9% |
| **Age** | | | |
| 15 or younger | 17.2% | 18.2% | 21.4% |
| 16-24 | 11.9% | 13.6% | 13.9% |
| 25-44 | 27.9% | 27.7% | 30.2% |
| 45-64 | 25.3% | 25.2% | 22.0% |

| | | | |
|---|---|---|---|
| 65+ | 17.6% | 15.3% | 12.4% |
| Average age (years) | 40.59 | 39.01 | 36.22 |

**Race & Ethnicity**

| | Charleston | Chas. | WV | US |
|---|---|---|---|---|
| White | 43,072 | 80.6% | 95.0% | 75.1% |
| Black or African American | 8,048 | 15.1% | 3.2% | 12.3% |
| American Indian & Alaska native | 127 | 0.2% | 0.2% | 0.9% |
| Asian | 979 | 1.8% | 0.5% | 3.6% |
| Native Hawaiian & other Pacific Islander | 16 | 0.0% | 0.0% | 0.1% |
| Some other race | 158 | 0.3% | 0.2% | 5.5% |
| Two or more races | 1,021 | 1.9% | 0.9% | 2.4% |
| Hispanic or Latino | 432 | 0.8% | 0.7% | 12.5% |

Sources: US Census Bureau, 2000 Census; ePodunk

**Healthcare**

Charleston is home to the 78th largest community health care system, including the nation's second largest cardiac care program, a Level I trauma center and a women and children's hospital. Regional patient capacity exceeds 1,600 beds encompassing four general acute care hospitals, two specialty hospitals and numerous clinics. The Charleston area enjoys a reputation as a leader in start-of-the-art health care facilities and specialties.

The area has become a major center of specialized care and advanced medical training, providing complete health services in modern well-equipped institutions. Charleston is home to the State's largest hospital complex, the Charleston Area Medical Center, with approximately 962 beds. It is the home of the Charleston Division of the West Virginia University School of Medicine. In addition, there are other hospitals operating in the area with approximately 530 licensed beds at Thomas Memorial Hospital and St. Francis Hospital.

Charleston Area Medical Center- Memorial Division, Specializes in Cardiac and Cancer diagnosis and treatment.

Charleston Area Medical Center- General Division, Level 1 Trauma Center, Neuroscience, Medical Rehabilitation Center, Behavioral Medicine, Psychiatry, Physical and Occupational Therapy, Transitional Care, Orthopedics. This hospital is one of only 2 kidney transplant centers in West Virginia and has the State's only accredited sleep center.

Women's & Children's Hospital, Specializes in Pediatrics, Obstetric & Gynecology.

Thomas Memorial Hospital, A full service facility offering inpatient, outpatient and emergency care. Also includes: Heart Center, the Cancer Center of Southern West Virginia with a patient support system; Diabetes Center, clinics and medical-surgical inpatient services.

St. Francis Hospital, a full service facility offering inpatient, outpatient and emergency care. This facility also offers a comprehensive program for treating lung disease and a sports medicine program.

**Utilities and Services**

One of the nation's largest investor-owned utility holding companies, American Electric Power, provides low-cost electricity to the Charleston area. Rates are lower than the national average because of AEP's highly efficient power plants, high voltage transmission systems, and easy access to West Virginia's coal supply.

A mix of corporate entities and public utilities provide water, natural gas, and electricity. Allegheny Power provides natural gas service in various parts of the State. West Virginia-American Water Company provides water service to most residents of Kanawha County. WVAWC is the State's largest water supplier with 40-MGD of production capacity.

**Employment**

The world's leading companies find Charleston the perfect fit for teamwork, innovation and productivity. Strategic proximity to markets, coupled with an extensive transportation network, provide the access vitally important to domestic and global commerce. Public and private sectors cooperate seamlessly to help companies achieve success. A reliable and well-trained workforce gives businesses the competitive edge needed in today's global economy.

The Charleston region has enjoyed steady economic growth with total employment increasing 21% over the past decade. Unemployment in the Charleston MSA closely mirrors the national average, ranging from a low of 3.9% to a high of 5.0% with an average of 4.7% in recent years.

Source: BIDCO

**Labor Force Statistics – Kanawha County**

| | *1999* | *2000* | *2001* | *2002* | *2003* |
|---|---|---|---|---|---|
| Civilian Labor Force | 107,450 | 107,190 | 108,190 | 104,260 | 100,690 |
| Total Employment | 102,370 | 102,890 | 104,010 | 99,150 | 95,810 |

| | | | | | |
|---|---|---|---|---|---|
| Total Unemployment | 5,080 | 4,500 | 4,180 | 5,110 | 4,880 |
| Unemployment Rate | 4.7% | 4.2% | 3.9% | 4.9% | 4.8% |

Source: BIDCO

**Leading Employers**

Major industries in the Charleston region include healthcare, services, government, chemicals, education and components manufacturing. There are more than 6,000 businesses in Kanawha County – representing more employment opportunities than any other county in West Virginia. New and expanding businesses benefit from assistance programs at both the State and local levels.

The region's largest employers in 2003:

| | |
|---|---|
| State Government | 12,400 |
| Charleston Area Medical Center (Healthcare) | 5,000 |
| Kanawha County Schools (Education) | 5,000 |
| Federal Government | 2,700 |
| Verizon West Virginia (Telecommunications) | 1,500 |
| City of Charleston | 850 |
| Accordia of West Virginia (Insurance Services) | 800 |
| Columbia Natural Resources | 700 |
| CASCI (Insurance services) | 650 |
| BB&T (Banking) | 600 |
| Ticketmaster (Ticket sales center) | 600 |

Source: BIDCO

**Transportation**

Residents of Charleston have immediate access to a full range of transportation services – highway, air, rail and water. It is a feature that gives the Charleston area an edge for attracting new businesses to the region.

The convergence of three interstate highways, I-64, I-77, and I-79 interconnecting Charleston as well as Appalachian Corridor "G" (US Rt. 119) brings the area within overnight road-travel distance of 60% of the nation's principal industrial and commercial markets. Charleston is one of 13 cities in the nation where three interstate highways converge. East-West I-64 extends from Norfolk, Virginia to St. Louis, Missouri; North-South I-77 from Cleveland Ohio to Columbia, South Carolina; northeast-southwest I-79 from Erie, Pennsylvania to Charleston, extending to Pikeville, Kentucky via US Rt. 119. In addition to the superhighways, three national and several state highways presently serve the SMSA.

Over 40 motor freight companies operate in the Kanawha Valley, of which over 20 maintain terminals, making the area one of the major trucking centers in the Eastern United States. The nation's eight largest motor freight companies are among those with terminals in Charleston. Charleston is the most direct route from the Upper Midwest to the Southeast and serves as a logical transfer point for shipments.

The Greyhound Bus Lines offers interstate and intrastate services, with both freight and passenger capacity.

Local bus service is furnished by the Kanawha Regional Transportation Authority. It operates a 60+ fleet bus system throughout the Kanawha Valley. The system, commonly know as the KRT, serves approximately 20 routes covering nearly 200 miles. Service is provided 7 days a week from 4:00 a.m. to 1 a.m.

Yeager Airport accommodates commercial, general aviation and military air traffic. Major improvements to the airport have been made in the last few years, including terminal remodeling, additional parking, and a building within the airport complex to house FAA offices and the National Weather Service. Charter air service and cargo air services are available from several companies at the airport. In July of 2004, Yeager Airport announced the arrival of Independence Air, the nations newest low fare carrier to the Charleston area. Charleston was officially designated a "port of entry" by the United States Customs in 1973.

Three major rail companies within the region: Norfolk Southern, CSX Transportation and Amtrak.

**Government**

Charleston City Council represents the interests of their constituents by responding to inquiries, suggestions and complaints regarding City programs and services. They govern through legislative, administrative, and financial powers and have the ability to levy taxes, enact ordinances and resolutions, and exercise budgetary and policy control over city departments.

The 27 Council Members are elected by ward for four-year terms with 21 members representing various wards as determined by ward boundaries and 6 At-Large members serving the entire City. Council has both Majority and Minority Leaders, who are selected by their respective parties during party caucuses. The President Pro-Tempore is elected by the entire City Council.

Kanawha County is governed by, and generally acts through, the County Commission of Kanawha County. The present Commissioners, elected on a countywide basis, are W. Kent Carper, President, Henry C. Shores and David J. Hardy. The County Commission exists and operates pursuant to the authority given to it under Article 1 of Chapter 7 of the Code of West Virginia of 1931, as amended. The County Commission is located in Charleston.

Source: City of Charleston

**Communications**

Charleston has two main newspapers, *The Charleston Gazette* and *Charleston Daily Mail.* TV Stations include WCHS/WVAH, WOWK, WSAZ and WPBY that broadcast throughout the county. Sixteen radio stations serve the Charleston area on both AM/FM frequencies.

**Housing**

While home styles vary from comfortable country farmhouse to a stylish hillside contemporary, value is consistent. The median sale price in Charleston, according to the Coldwell Bank Home Price Comparison Index, 2001, (Based on 2,200 sq. ft., 4 bedrooms, 2.5 baths, family room, 2-car garage) is $180,475. Competitive home prices, combined with property taxes that are among the lowest in the nation, mean "more house for less money."

**Cost of Living**

Charleston is an affordable city with countless amenities that make it one of the most desirable places in the East to work and play.

The most recent ACCRA cost of living composite index for Charleston is 88.8 versus the nationwide benchmark of 100.0 (first quarter 2004).

Source: BIDCO

**Cultural/Arts**

Performing arts include West Virginia Symphony Orchestra, Charleston Light Opera Guild, Kanawha Players, Children's Theater of Charleston and the Charleston Ballet. Mountain Stage is broadcast nationwide from Charleston each Sunday.

The Clay Center for the Arts and Sciences houses a science museum, art museum, planetarium and a concert hall.

**Economic Statistics**

*Economic Indicators for Kanawha County*

| | |
|---|---|
| Per Capita Income (2002) * | $31,821 |
| Total Personal Income (2002) | $6,233,145 |

* Thousands of dollars

*Employment and Wages Covered by Unemployment Compensation Programs*

| | |
|---|---|
| Employment, Annual Average 2000 | 113,019 |
| Total Wages, Annual 2000 | $3,408,180,576 |
| Annual Wage, Annual Average 2000 | $30,155 |
| Weekly Wage, Annual Average 2000 | $579.92 |

Source: Bureau of Employment Programs

**Nearby Metropolitan Cities Distance (miles)**

| | |
|---|---|
| Huntington, WV | 53 |
| Parkersburg, WV | 79 |
| Columbus, OH | 212 |
| Pittsburgh, PA | 227 |

**Climate**

| | | |
|---|---|---|
| Temperature Mean Annual Average: | | 55 degrees |
| January Averages: | *High* 41 | *Low* 23 |
| July Averages: | *High* 86 | *Low* 64 |

| | |
|---|---|
| Long Term Precipitation (inches) | |
| Annual: | 42.5 |
| January | 2.91 |
| July: | 4.99 |

Mean Annual Snowfall Range (inches): 25-40

Source: Bureau of Employment Security of WV

**Recreation**

Charleston is at the center of recreational activity for the eastern United States. From boating on the beautiful Kanawha River to riding the wildest whitewater...from golfing the most challenging, picturesque courses to enjoying music of the world...all can be found right here.

When it's time to leave the workplace, Charlestonians travel ten minutes to Kanawha State Forest for hiking, walking, biking, camping, swimming and horseback riding. It's just one of thirteen public parks and campgrounds located within the region.

Whether you want to go boating, take a stroll, or rollerblade, head to Magic Island or Haddad Riverfront Park for riverside fun. Local marinas and boat clubs provide river access and amenities to local boaters and water lovers.

Snowshoe Resort, Winterplace and Canaan Valley Resort offer the finest downhill skiing in the Southeast. All are a convenient day trip from Charleston.

Source: BIDCO

**Colleges & Universities**

Local colleges and universities are progressive partners with industry, providing customized training, research support and advanced degree programs. The Charleston region is focused on attracting world-class talent to support an expanding base of highly technical domestic and international companies.

Five fully accredited colleges and universities serve the Charleston region offering quality undergraduate and graduate degree programs. These institutions maintain a total enrollment in excess of 29,000 students.

**Marshall University**
**Southern WV Community College**
**University of Charleston**
**WV State University**
**WVU Institute of Technology**

Additionally, superior vocational schools and an adult career centers offer nearly forty programs of study.

Source: BIDCO

## APPENDIX B

## SUMMARY OF CERTAIN PROVISIONS OF THE BOND ORDINANCE

The Notes and Series 2005 B Bonds are issued under an Ordinance, as defined below. The following is a summary of certain terms, provisions and covenants of the Bond Ordinance. This summary makes use of terms defined in the Prior Ordinances and Bond Ordinance, certain of which are defined in "Definitions" which follows. This summary is not to be considered a full statement of the terms of the Prior Ordinances or the Bond Ordinance, and, accordingly, is qualified by reference thereto and is subject to the full text thereof. Until the Series 2005 A Bonds are issued, the Prior Ordinance and its covenants remains in effect. Certain covenants and requirements of the Prior Ordinance are more restrictive than the Ordinance. Upon the issuance of the Series 2005 A Bonds, the Prior Ordinance will be released and discharged.

Definitions

"Act" shall mean Chapter 8, Article 12, Chapter 8, Article 16, and Chapter 13, Article 2E, of the Code of West Virginia, 1931, as amended.

"Authorized Officer" shall mean the Mayor of the City or any other officer of the City specifically designated by resolution of the City Council.

"Bondholder" or "Owner of the Bonds" or "Registered Owner" or any similar term shall mean any person who shall be the registered owner of any Outstanding fully registered Bond.

"Bond Register" shall mean the books of the City maintained by the Registrar for the registration and transfer of the Bonds.

"Bonds" shall mean, collectively, the Parking System Refunding Revenue Bonds, Series 2005 A and 2005 B and any parity additional Bonds issued within the terms, restrictions and conditions contained in the Ordinance.

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

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Certificate of Authentication and Registration" shall mean the Certificate of Authentication and Registration on the Series 2005 A Bonds and Series 2005 B Bonds.

"City" shall mean The City of Charleston, a municipal corporation of the State of West Virginia, and, where appropriate, the City Council.

"City Clerk" shall mean the Clerk of the City.

"City Council" shall mean the Council of the City or any other governing body of the City that succeeds to the functions of the City Council as presently constituted.

"Closing Date" shall mean respectively, the dates upon which there is an exchange of the Note or Series 2005 A Bonds for the proceeds representing the original purchase price thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations issued pursuant thereof.

"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.

"Committee" or "Parking Facilities Committee" shall mean the committee composed of the Mayor and other members of the City Council.

"Conversion Date" shall mean the date upon which the Note is converted to the Series 2005 B Bonds.

"Cost of Issuance Fund" shall mean the funds established for the Note and the Series 2005 A Bonds.

"Costs"or similar terms shall mean all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant to the Ordinance, including, without limitation, the costs of refunding the Prior Bonds, interest accruing or to accrue thereon, redemption premiums, premiums for municipal bond insurance and reserve account insurance, letter of credit fees, expenses for fiscal or other agents, legal expenses and any other costs or expenses necessary, incidental, desirable or appurtenant to the issuance of the Notes, the Series 2005 Bonds and the refunding of the Prior Bonds.

"Depository Bank" shall mean the bank designated in a resolution supplemental to the Ordinance as eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC and any successor thereto.

"DTC" shall mean The Depository Trust Company, New York, New York.

"DTC Eligible" shall mean bonds meeting the qualifications, prescribed by The Depository Trust Company, New York, New York.

"Escrow Agent" shall mean the Escrow Agent with respect to each Escrow Agreement.

"Escrow Agreement" shall mean the agreements between the City and the Escrow Agent, relating to the refunding and defeasance of the Prior Bonds.

"Escrow Fund" shall mean the escrow fund created by each Escrow Agreement.

"Event of Default" shall mean any occurrence or events specified in the Ordinance.

"FDIC" shall mean the Federal Deposit Insurance Corporation or any successor to the function of the FDIC.

"Fiscal Year" shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

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

"Gross Revenues" shall mean all rates, rents, fees, charges or other income received by or accrued to the Parking Facilities Committee from the operation of the Parking System, as calculated in accordance with generally accepted accounting principles.

"Independent Accountants" shall mean any certified public accountant or firm of certified public accountants which shall be retained by the City as independent accountants for the Parking System.

"Mayor" shall mean the Mayor of the City.

"Net Proceeds" shall mean the face amount of the Bonds, plus accrued interest or premium, if any, less Original Issue Discount, if any, and less proceeds deposited in the Reserve Account, if any.

"Net Revenues" shall mean Gross Revenues less Operating Expenses.

"Nonpurpose Investment" shall mean any investment property which is acquired with the gross proceeds or any other proceeds of the Series 2005 Bonds and is not acquired in order to carry out the governmental purpose of the Series 2005 Bonds.

"Note" shall mean the Parking System Bond Anticipation Note originally authorized to be issued pursuant to the Ordinance.

"Note Repayment Account" shall mean the account established pursuant to the Ordinance.

"Note Reserve Account" shall mean the account established pursuant to the Ordinance.

"Off-Street Parking Facilities" shall mean the parking lots, parking building or other structures, motor vehicle ramps within and leading to and from such buildings and structures, parking meters or other equipment, machinery or devices for obtaining revenue from public parking or motor vehicles, entrances, exits, fencing and all other facilities, equipment and accessories

necessary or desirable for public parking of vehicles, for which fees or other charges are fixed, established and collected, pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities leading to or from such parking lots, parking buildings and other structures, and buildings, structures and facilities acquired or constructed by the City for lease or (prior to the sale thereof) sale for commercial, business or charitable use on, in or under such parking lots, parking buildings and structures, and all properties, real personal, tangible or intangible, used 'in connection therewith, now owned, operated or controlled by the City, or hereafter constructed or acquired by said City from any source whatsoever, within the City, provided, that Off-Street Parking Facilities do not include property owned by the City where municipal owned vehicles are parked or stored while being used in the performance of municipal functions.

"On-Street Parking Facilities" shall mean places on or in the streets of the City and parking meters or other equipment, machinery or devices installed, located or existing at or near the curbs of the streets adjacent to such places for collecting revenues from public parking of vehicles in such places, for which fees or other charges are fixed, established or collected, and all such facilities hereafter located, constructed or acquired by said City from any sources whatsoever for which fees or other charges are fixed, established or collected.

"Operating Expenses" unless qualified, shall mean the current expenses, paid or accrued, for repair, operation and maintenance of the Parking System (excluding depreciation and interest and principal of the Bond and Note indebtedness) and includes, without limiting the generality of the foregoing, supplies, labor, wages, the cost of materials and supplies used for current operations, administrative expenses of the City or the Parking Facilities Committee relating and chargeable to the Parking System and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles.

"Outstanding" when used with reference to Notes or Bonds and as of any particular date, describes all Notes or Bonds theretofore and thereupon being issued and delivered except (a) any Note or Bond cancelled by the Registrar for such Note or Bond at or prior to said date; (b) any Note or Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under the Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Note or Bond deemed to have been paid as provided by the Ordinance; and (d) with respect to determining the number or percentage of Bondholders or Notes or Bonds for the purpose of consents, notices and the like, any Note or Bond registered to the City.

"Parking System" shall mean all Off-Street Parking Facilities and On-Street Parking Facilities.

"Participant" shall mean the person or entity registered as such with DTC.

"Paying Agent" shall mean any paying agent for the Notes or Bonds appointed by a resolution supplemental to the Ordinance.

"Prior Bonds" shall mean the City's Parking System Refunding Revenue Bonds, Series 1993, dated June 1, 1993, issued in the original principal amount of $5,235,000 and currently

outstanding in the principal amount of $3,000,000 (the "Series 1993 Bonds"), Parking System Revenue Bonds, Series 1994 A, dated December 15, 1994, issued in the original principal amount of $4,545,000, and currently outstanding in the principal amount of $3,720,000, Parking System Subordinate Revenue Bonds, Series 1994 B, dated December 15, 1994, issued in the original principal amount of $5,455,000, and currently outstanding in the principal amount of $4,035,000 and Parking System Subordinate Revenue Bonds, Series 1995, dated January 1, 1995, issued in the original principal amount of $1,620,000, and currently outstanding in the principal amount of $1,195,000 (collectively, the "Series 1994 and Series 1995 Bonds").

"Prior Bonds Redemption Date" shall mean the dates established by a resolution supplemental to the Ordinance for the redemption of each series of Prior Bonds.

"Prior Ordinances" shall mean collectively the following ordinances passed by the City Council, as amended and supplemented thereafter:

(a) An ordinance dated May 17, 1993, supplementing the Original Ordinance authorizing the issuance of the $5,235,000 Parking System Refunding Revenue Bonds, dated June 1, 1993; and

(b) An ordinance dated December 5, 1994, supplementing the Original Ordinance authorizing the issuance of the $4,545,000 Parking System Revenue Bonds and of the $5,455,000 Parking System Subordinate Revenue Bonds, dated December 15, 1994, and the issuance of the $1,620,000 Parking System Subordinate Revenue Bonds, dated January 1, 1995.

"Private Business Use" shall mean use directly or indirectly in any trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Purchase Price," for the purpose of computation of the Yield of the Series 2005 Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 2005 Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Series 2005 Bonds of each maturity is sold or, if the Series 2005 Bonds are privately placed, the price paid by the first buyer of the Series 2005 Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 2005 Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 2005 Bonds.

"Purchaser" or "Original Purchaser" shall mean with respect to the Notes and the Bonds collectively, Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated, Charleston, West Virginia.

"Qualified Investments" shall mean and includes any of the following, unless otherwise set forth in the Supplemental Resolution:

(a) Government Obligations;

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

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

(h) The West Virginia " consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 of the Code of West Virginia, 1931, as amended; and

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

"Record Date" shall mean the day of the month which shall be so stated in the Bonds, regardless of whether such day is a Saturday, Sunday or other legal holiday.

"Redemption Price" shall mean such amount(s) as is established in a resolution to the Ordinance.

"Registrar" shall mean the bank to be designated as the registrar for the Notes and Series 2005 Bonds, and any successor thereto.

"Regulations" shall mean temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1986, as amended.

"Repair, Operation and Maintenance Fund" shall mean the account created by the Ordinance.

"Representation Letter" shall mean the Letter Agreement among the City, DTC and the Paying Agent.

"Revenue Fund" shall mean the fund created by the Ordinance.

"Series 2005 Bonds" shall mean collectively the Parking System Refunding Revenue Bonds, Series 2005 A and Series 2005 B, of the City originally authorized to be issued pursuant to the Ordinance.

"Series 2005 A Bonds" shall mean the Parking System Refunding Revenue Bonds, Series 2005 A.

"Series 2005 A Bonds Rebate Fund" shall mean the Series 2005 A Bonds Rebate Fund created by the Ordinance.

"Series 2005 A Bonds Redemption Account" shall mean the Series 2005 A Bonds Redemption Account created by the Ordinance.

"Series 2005 A Bonds Reserve Account" shall mean the Series 2005 A Bonds Reserve Account created by the Ordinance.

"Series 2005 A Bonds Reserve Requirement" shall mean, as of any date of calculation, the lesser of (i) 10% of the original stated principal amount of the Series 2005 A Bonds; (ii) the maximum amount of principal and interest which will become due on the Series 2005 A

Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Series 2005 A Bonds.

"Series 2005 A Bonds Sinking Fund" shall mean the Series 2005 A Bonds Sinking Fund created by the Ordinance.

"Series 2005 B Bonds" shall mean the Parking System Refunding Revenue Bonds, Series 2005 B.

"Series 2005 B Bonds Rebate Fund" shall mean the Series 2005 B Bonds Rebate Fund created by the Ordinance.

"Series 2005 B Bonds Redemption Account" shall mean the Series 2005 B Bonds Redemption Account created by the Ordinance.

"Series 2005 B Bonds Reserve Account" shall mean the Series 2005 B Bonds Reserve Account created by the Ordinance.

"Series 2005 B Bonds Reserve Requirement" shall mean, as of any date of calculation, the lesser of (i) 10% of the original stated principal amount of the Series 2005 B Bonds; (ii) the maximum amount of principal and interest which will become due on the Series 2005 B Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Series 2005 B Bonds.

"Series 2005 B Bonds Sinking Fund" shall mean the Series 2005 B Bonds Sinking Fund created by the Ordinance.

"State" shall mean the State of West Virginia.

"Supplemental Resolution" shall mean any ordinance or resolution amendatory of the Ordinance or supplemental to the Ordinance and, when preceded by the article "the," refers specifically to the Supplemental Resolution authorizing the sale of the Series 2005 Bonds and the Note to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"Surplus Revenues"shall mean the Net Revenues not required by the Ordinance to be set aside and held for the payment of or security for the Bonds or any other obligations of the City, including, without limitation, the Sinking Funds, the Reserve Accounts and the Repair, Operations and Maintenance Fund.

Authorization of Refunding and Redemption of the Series 1993 Bonds.

The lien of the Series 1993 Bonds outstanding as of the date of issuance of the Note imposed by the Prior Ordinance on the revenue of the Parking System is hereby ordered terminated,

discharged and released upon the payment onto the Series 1993 Escrow Fund from the proceeds of the Note, together with other moneys available therefor, including those moneys transferred as provided below, of the following: (a) an amount equal to the fiscal and paying agent charges, and (b) an amount which will be simultaneously invested in United States Treasury Obligations bearing interest and having maturities sufficient to provide (i) for the payment of the principal of the Series 1993 Bonds as the same mature on each principal payment date established with respect thereto prior to the Series 1993 Bonds Redemption Date, if any, established for such Series 1993 Bonds, (ii) for the payment of the redemption price of the Series 1993 Bonds outstanding on the Series 1993 Bonds Redemption Date, if any, established for such Series 1993 Bonds, and (iii) for the payment of the interest on the Series 1993 Bonds as the same becomes due. Contemporaneously with the deposit of proceeds of the Note into the Series 1993 Escrow Fund, and as prescribed by the Series 1993 Escrow Agreement, the amounts on deposit in the sinking fund including the reserve account therein, created and maintained on behalf of the Series 1993 Bonds shall be deposited into the Series 1993Escrow Fund and simultaneously invested as provided in the Series 1993 Escrow Agreement.

Authorization of Refunding and Redemption of the Series 1994 and Series 1995 Bonds.

The lien of the Series 1994 and Series 1995 Bonds outstanding as of the date of issuance of the Series 2005 A Bonds imposed by the Prior Ordinances on the revenues of the Parking System is hereby ordered terminated, discharged and released upon the payment into the Series 1994/1995 Escrow Fund relating thereto from the proceeds of the Series 2005 A Bonds, together with other moneys available therefor, including those moneys transferred as provided below, of the following: (a) an amount equal to the fiscal and paying agent charges, and (b) an amount which will be simultaneously invested in United States Treasury Obligations bearing interest and having maturities sufficient to provide (i) for the payment of the principal of the Series 1994 and Series 1995 Bonds as the same mature on each principal payment date established with respect thereto prior to the Series 1994 and Series 1995 Bonds Redemption Date, if any, established for such Series 1994 and Series 1995 Bonds, (ii) for the payment of the redemption price of the Series 1994 and Series 1995 Bonds outstanding on the Series 1994 and Series 1995 Bonds Redemption Date, if any, established for such Series 1994 and Series 1995 Bonds, and (iii) for the payment of the interest on the Series 1994 and Series 1995 Bonds as the same becomes due. Contemporaneously with the deposit of proceeds of the Series 2005 A Bonds into the Series 1994/1995 Escrow Fund, and as prescribed by the Series 1994/1995 Escrow Agreement, the amounts on deposit in each sinking fund including the reserve account therein, created and maintained on behalf of the Series 1994 and Series 1995 Bonds shall be deposited into the Series 1994/1995 Escrow Fund and simultaneously invested as provided in the Series 1994/1995 Escrow Agreement. Upon the refunding of the Series 1994 and Series 1995 Bonds, the amounts on deposit in the Repair, Operation and Maintenance Fund created and maintained under the Prior Ordinances with respect to the Prior Bonds shall be transferred as set forth in the Supplemental Resolution.

Authorization and Term of Note.

For the purpose of refunding the Series 1993 Bonds, there shall be issued the Parking System Bond Anticipation Note. The Note shall be in such aggregate principal amount, not to exceed $3,500,000; shall be dated, shall bear interest and shall mature at such time as is provided by

a supplemental resolution and shall be secured solely by the pledge of the City to issue the Series 2005 B Bonds.

Authorization and Terms of Series 2005 Bonds.

For the purpose of refunding the Series 1994 and Series 1995 Bonds, there shall be issued the Parking System Refunding Revenue Bonds, Series 2005 A. Following the issuance of the Series 2005 A Bonds and as set forth in a resolution supplemental to the Ordinance, the Notes shall convert to the Parking System Refunding Revenue Bonds, Series 2005 B of the City. The Series 2005 Bonds shall be in such aggregate principal amount, not to exceed $12,885,000; shall be dated such date; shall bear interest payable semiannually at such dates and at such rate or rates not exceeding the rate permitted by the Act; shall be in fully registered form; shall mature at such time or times, not exceeding forty (40) years after the date of issuance; shall have such denominations; and shall contain such other terms, provisions, conditions and limitations, all as provided by the Ordinance and as the City Council shall prescribe by Supplemental Resolutions adopted in connection with the sale of such Series 2005 A and Series 2005 B Bonds.

The Bonds shall be payable as to principal at the office of the Paying Agent in any coin or currency which on the respective date of payment of principal and interest, is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address that appears on the books of the Registrar or, in the event of a default in the payment on the Series 2005 Bonds, that special record date to be fixed by the Registrar by notice given to the Registered Owners not less than ten (10) days prior to said special record date (the "Special Record Date") or, if requested in the case of such an owner of $1,000,000 or more in principal amount of Series 2005 Bonds, by wire transfer to a domestic bank account specified in writing at least five (5) days prior to the Record Date by such owner.

The Series 2005 Bonds shall, at the option of the City, be redeemable in whole or in part, at the times, in the manner, and upon payment of the redemption prices, as provided in the Supplemental Resolution.

Application of Revenues - Parking System Revenue Fund

Establishment of Funds and Accounts with Depository Bank. (A) Pursuant to the Ordinance, the following special funds are hereby created with (or continued if previously established by the Prior Ordinances), and shall be held by, the Depository Bank, separate and apart from all other funds and accounts of the Depository Bank or the City and from each other, and used solely for the purposes provided in the Ordinance:

(1) Revenue Fund (established by the Prior Ordinances);

(2) Repair, Maintenance and Operations Fund (established by the Prior Ordinances);

(3) Costs of Issuance Fund;

(4) Series 2005 A Bonds Rebate Fund; and

(5) Series 2005 B Bonds Rebate Fund.

(B) Establishment of Funds and Accounts with Commission. Pursuant to the Ordinance, the following special funds and accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds and accounts of the Commission or the City and from each other:

(1) Note Repayment Account;

(2) Note Reserve Account;

(3) Series 2005 A Bonds Sinking Fund;

(4) Series 2005 A Bonds Reserve Account;

(5) Series 2005 A Bonds Redemption Account;

(6) Series 2005 B Bonds Sinking Fund;

(7) Series 2005 B Bonds Reserve Account; and
(8) Series 2005 B Bonds Redemption Account.

Disposition of Parking System Revenues

The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the City in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner provided in the Ordinance. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(A) All revenues deposited in the Revenue Fund shall be used first to pay current Operating Expenses of the Parking System.

(B) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) commencing 6 months prior to the first interest payment date of the Series 2005 A Bonds, a sum equal to 1/6th of the amount of interest which will become due on the Series 2005 A Bonds on the next ensuing semiannual interest payment date for deposit in the Series 2005 A Bonds Sinking Fund; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased

proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2005 A Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2005 A Bonds deposited therein; and (ii) commencing 6 months prior to the first interest payment date of the Series 2005 B Bonds, a sum equal to 1/6th of the amount of interest which will become due on the Series 2005 B Bonds on the next ensuing semiannual interest payment date for deposit in the Series 2005 B Bonds Sinking Fund; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2005 B Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2005 B Bonds deposited therein.

(C) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission for deposit into the respective Sinking Fund (i) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 2005 A Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 2005 A Bonds on the next ensuing annual principal payment date or mandatory Redemption Date for deposit in the Series 2005 A Bonds Sinking Fund and in the Series 2005 A Bonds Redemption Account in the case of the Term Bonds which are to be redeemed; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing annual principal payment date or mandatory Redemption Date is less than or greater than 12 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date; and (ii) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 2005 B Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 2005 B Bonds on the next ensuing principal payment date or mandatory Redemption Date for deposit in the Series 2005 B Bonds Sinking Fund and in the Series 2005 B Bonds Redemption Account in the case of the Term Bonds which are to be redeemed; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing annual principal payment date or mandatory Redemption Date is less than or greater than 12 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date.

(D) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) an amount to be deposited in the Series 2005 A Bonds Reserve Account which will be sufficient to remedy any decrease in value of the Series 2005 A Bonds Reserve Account below the Series 2005 A Bonds Reserve Requirement or any withdrawal from the Series 2005 A Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2005 A Bonds Reserve Account results in a determination that the amount of moneys and the value of the

Qualified Investments deposited to the credit of the Series 2005 A Bonds Reserve Account is less than the Series 2005 A Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2005 A Bonds Reserve Account for deposit into the Series 2005 A Bonds Sinking Fund; and (ii) an amount to be deposited in the Series 2005 B Bonds Reserve Account which will be sufficient to remedy any decrease in value of the Series 2005 B Bonds Reserve Account below the Series 2005 B Bonds Reserve Requirement or any withdrawal from the Series 2005 B Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2005 B Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2005 B Bonds Reserve Account is less than the Series 2005 B Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2005 B Bonds Reserve Account for deposit into the Series 2005 B Bonds Sinking Fund. To the extent Net Revenues and any other legally available funds are available therefor, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2005 A Bonds Reserve Account or the Series 2005 B Bonds Reserve Account to an amount equal to the respective Reserve Requirement; provided, that no payments shall be required to be made into the such Reserve Accounts whenever and as long as the amounts deposited therein shall be equal to the respective Reserve Requirement.

(E) The City shall next, each month after all payments required above have been made, transfer the balance remaining in the Revenue Fund to the Repair, Maintenance and Operation Fund. All funds in the Repair, Maintenance and Operation Fund shall be kept apart from all other funds of the City or of the Depository Bank and shall be invested and reinvested in as provided in the Ordinance. Withdrawals and disbursements may be made from the Repair, Maintenance and Operation Fund as provided in Section 3.04 of the Ordinance.

(F) Moneys in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall be come due. Moneys in the Series 2005 A Bonds Reserve Account and the Series 2005 B Bonds Reserve Account shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall come due, when other moneys in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund are insufficient therefor, and for no other purpose, except for permitted transfers to the respective Rebate Fund.

Except to the extent transferred to the respective Rebate Fund, all investment earnings on moneys in the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 A Bonds Redemption Account, the Series 2005 B Bonds Sinking Fund, the Series 2005 B Bonds Reserve Account and the Series 2005 B Bonds Redemption Account shall be returned, not less than once each year, by the Commission to the City, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, and then to the next ensuing principal payment due thereon.

Except to the extent transferred to the respective Rebate Fund, any withdrawals

from the Series 2005 A Bonds Reserve Account and the Series 2005 B Bonds Reserve Account which result in a reduction in the balance of such accounts to below the respective Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve accounts in an amount equal to the requirement therefor.

The City shall not be required to make any further payments into the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Sinking Fund and the Series 2005 B Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity basis and pro rata, all in accordance with the respective principal amounts then Outstanding.

The Commission is designated as the fiscal agent for the administration of the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 A Bonds Redemption Account, the Series 2005 B Bonds Sinking Fund, the Series 2005 B Bonds Reserve Account and the Series 2005 B Bonds Redemption Account created hereunder, and all amounts required for such accounts shall be remitted to the Commission from the Revenue Fund by the City at the times provided in the Ordinance.

Moneys in the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 A Bonds Redemption Account, the Series 2005 B Bonds Sinking Fund, the Series 2005 B Bonds Reserve Account and the Series 2005 B Bonds Redemption Account shall be invested and reinvested by the Commission as provided in the Ordinance.

(G) If on any payment date the Net Revenues are insufficient to place the required amount in any of the funds as hereinafter provided, the deficiency shall be made up in subsequent payments to such funds.

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

Application of Note and Bond Proceeds

Disposition of Proceeds of Note. Upon issuance and delivery of the Note, the City shall deposit into the Series 1993 Escrow Fund an amount which, together with other moneys or securities deposited therein and the earnings therein, shall be sufficient to accomplish the refunding and defeasance of the Series 1993 Bonds (which amount shall be set forth in the Escrow Agreement), fund the Note Reserve Account and fund the Cost of Issuance Fund.

Disposition of Proceeds of Series 2005 A Bonds. Upon the issuance and delivery of the Series 2005 A Bonds, the City shall forthwith deposit the proceeds thereof as follows:

A. All interest accrued on the Series 2005 A Bonds from the date thereof to the date of delivery thereof shall be deposited in the Sinking Fund for the Series 2005 A Bonds and applied to payment of interest on the Series 2005 A Bonds at the first interest payment date.

B. An amount of the proceeds of the Series 2005 A Bonds which, together with other moneys or securities deposited therein and the earnings thereon, shall be sufficient to accomplish the refunding and defeasance of the Series 1994 and Series 1995 Bonds (which amount shall be set forth in the Escrow Agreement) shall be deposited in the Escrow Fund.

C. An amount of the proceeds of the Series 2005 Bonds equal to the Reserve Requirement for the Series 2005 A Bonds shall be remitted to the Commission for deposit in the Reserve Accounts for the Series 2005 A Bonds.

D. The balance of the proceeds of the Series 2005 A Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the City solely to pay costs of issuance of the Series 2005 A Bonds and miscellaneous costs of refunding the Prior Bonds at the written direction of the City. All such costs of issuance shall be paid within 60 days of the Closing Date. Moneys not to be applied immediately to pay such costs of issuance and refunding may be invested in accordance with the Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the City to the Redemption Accounts for the Series 2005 A Bonds. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such moneys until so applied in favor of the Registered Owners of the Series 2005 A Bonds.

Conversion of Note to Series 2005 B Bonds. Following the issuance and delivery of the Series 2005 A Bonds, the Note shall be tendered to the City and the City shall deliver the Series 2005 B Bonds.

General Covenants of the City

All the covenants, agreements and provisions of the Ordinance shall be and constitute valid and legally binding covenants of the City and shall be enforceable in any court of competent

jurisdiction by any Registered Owners of said Bonds. In addition to the other covenants, agreements and provisions of the Ordinance, the City hereby covenants and agrees with the Registered Owner or Owners of said Bonds in the manner provided in Article V of the Ordinance. All such covenants, agreements and provisions shall be irrevocable, except as provided in the Ordinance, as long as any of said Bonds or the interest thereon, are Outstanding and unpaid.

Bonds Not to be Indebtedness of the City

The Note and the Series 2005 Bonds shall not be or constitute an indebtedness of the City, within the meaning of any constitutional statutory or charter limitation of indebtedness, but shall be payable solely from the Net Revenues of the Parking System, as provided in the Ordinance. No Registered Owner of any Bond issued hereunder shall ever have the right to compel the exercise of the taxing power of the City, to pay said Bonds or the interest thereon.

Bonds Secured By Pledge of Net Revenues; Note is Not Secured by Revenues of the Parking System.

The payment of the debt service of all of the bonds issued under the Ordinance shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the Parking System to the extent necessary to make the payments required under the Ordinance. The Net Revenues derived from the Parking System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized, and to make the payments into the Sinking Fund, including the Reserve Account therein, and all other payments provided for in the Ordinance, are hereby irrevocably pledged in the manner provided in the Ordinance, to the payment of the principal of and interest on the Bonds herein authorized as the same become due, and for the other purposes provided in the Ordinance. The Note is not secured by the Net Revenues of the Parking System.

Statutory Mortgage Lien Created

The Registered Owners of the Bonds issued pursuant to the Ordinance shall have a statutory mortgage lien upon the Parking System pursuant to the provisions of Section 22 of the Bond Act, which statutory mortgage lien shall exist in favor of, and shall be enforceable in any lawful manner by, the Registered Owners of the Series 2005 Bonds, and each of them, and the Parking System shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest on the Bonds issued pursuant to the Ordinance. The statutory mortgage lien shall be a first mortgage on said Parking System, and the City shall not place any other mortgage or encumbrance on said Parking System, or any part thereof.

Rates

The City will fix, establish and maintain such rates and collect such fees, rentals or other charges for the services and facilities of said Parking System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year at least sufficient to pay, one hundred fifteen per centum (115%) of the largest amount of principal and interest maturing and becoming due on said Bonds then Outstanding in any succeeding fiscal year, in addition to paying, as the same shall become due, the necessary expense of repair (including replacement),

maintenance and operation of said Parking System in each fiscal year, and all obligations or indebtedness other than the Bonds payable out of revenues of said Parking System in such fiscal year, and that such rates, fees, rentals or other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Operation and Maintenance

The City will maintain the Parking System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said Parking System in the manner provided in the Ordinance.

Sale of the Parking System

The City will not voluntarily sell, mortgage or otherwise dispose of or encumber the Parking System or any property essential to the proper operation thereof while any of the Bonds authorized in the Ordinance are Outstanding except for leases or sales of space therein designed for sale or lease for commercial, business or charitable uses; provided, however, that the City may sell all or any portion the Parking System if the City shall receive from such sale moneys adequate to fully defease all of the Outstanding Series 2005 Bonds and any additional bonds issued under the Ordinance in accordance with the provision in Section 9.01 of the Ordinance; and further provided that the City may sell or otherwise dispose of a portion of the Parking System only following a receipt of a certificate from an Independent Accountant to the effect that the Net Revenues for the remaining unsold portion of the Parking System are sufficient to meet the requirements of Section 5.05 of the Ordinance. Any proceeds received from the sale of a portion of the Parking System shall be deposited with the Commission and used to redeem Series 2005 Bonds, in inverse order, on the next available redemption date.

Issuance of Other Obligations Payable Out of Revenues

The City will not issue any other obligations for any purpose, payable from the revenues derived from the operation of said Parking System, except parity additional Bonds provided for in the Ordinance, nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or any other charge which will have priority to or be on a parity with the lien of the Bonds issued pursuant to the Ordinance and interest thereon, upon any of the income and revenues of said Parking System, or any part thereof. Any other obligations hereafter issued by the City, payable from such revenues, except such parity additional Bonds, shall contain an express statement that such obligations are junior, subordinate and inferior to the Bonds issued pursuant to the Ordinance as to lien and source and security for payment from the revenues of said Parking System, and in all other respects.

Issuance of Parity Additional Bonds

No parity additional Bonds, payable out of the revenues of the Parking System, shall be created after the issuance of any Bonds pursuant to the Ordinance, except under the conditions and in the manner provided in the Ordinance.

No such parity additional Bonds shall be issued unless the Net Revenues derived from the Parking System during any twelve (12) consecutive months during the period of eighteen (18) months immediately prior to the issuance of the additional Bonds then proposed to be issued, as set forth in a certificate of an Independent Accountant, appointed by the City, filed with the City Clerk, shall be not less than one hundred fifteen per centum (115%) of the largest amount of principal and interest which will mature and become due in any succeeding year on the Bonds issued pursuant to the Ordinance then Outstanding and on any parity additional Bonds theretofore issued and then Outstanding, and on any other obligations then Outstanding which are payable from the revenues of said Parking System, or any part thereof, and on the parity additional Bonds then proposed to be issued; provided, however, that if the parity additional bonds are refunding bonds to achieve a debt service savings, then such test shall not apply.

Such parity additional Bonds shall be issued only for the financing of the construction and acquisition of additions, extensions and improvements to the Parking System, and all revenues derived therefrom shall be deposited in the Revenue Fund created by the Ordinance or for refunding all or any part of any Bonds Outstanding under the Ordinance.

The term "parity additional Bonds" shall be deemed to mean additional Bonds issued under the provisions and within the limitations of the Ordinance, payable from the Parking System on parity with Bonds originally authorized and issued pursuant to the Ordinance. Such parity additional Bonds shall be deemed to have been issued pursuant to the Ordinance, and all of the covenants, agreements and other provisions of the Ordinance (except as to details of such parity additional Bonds inconsistent therewith) shall be for the equal benefit, protection and security of the Registered Owners of any Bonds originally authorized and issued pursuant to the Ordinance and the holders of any parity additional Bonds subsequently created within the limits of and in compliance with the Ordinance. All of such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of said Parking System and their source and security for payment from said revenues without preference of any Bond, over any other. The City shall comply fully with all the increased payments into the various funds created in the Ordinance required for such parity additional Bonds, in addition to the payments required for Bonds originally issued pursuant to the Ordinance.

The term "parity additional Bonds" shall not be deemed to include bonds, notes, certificates, or any other obligations subsequently issued, the lien of which on the revenues of the Parking System, or any part thereof, is subject to the prior and superior lien on such revenues of the Bonds issued pursuant to the Ordinance, and the City shall not issue any obligations whatsoever payable from the revenues of said Parking System, or for payment from such revenues with Bonds issued pursuant to the Ordinance, except in the manner and under the conditions provided in the Ordinance.

No parity additional Bonds shall be created at any time, however, unless all of the payments into the respective funds provided for in the Ordinance shall have been made in full to the date of issuance of such parity additional Bonds, and the City shall have fully complied with all covenants, agreements and terms of the Ordinance.

Insurance

The City will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the Parking System with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, flood, cyclone, occupancy or other hazards and risks, which insurance shall at all times be in an amount or amounts equal to the fair appraisal value of the buildings, properties, furniture, fixtures, and equipment of said Parking System. 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 City shall 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 Parking System.

Books and Records

The City will keep books and records of the Parking 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 Parking System, and any Registered Owner of a Bond or Bonds issued pursuant to the Ordinance shall have the right at all reasonable times to inspect the Parking System and all parts thereof, and all records, accounts and data of the City relating thereto.

The accounting system for the Parking System shall follow generally accepted accounting principles and safeguards. Subsidiary records as may be required shall be kept in the manner, on the forms, books, and 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 of the City shall direct. The City Treasurer of the City shall prescribe the forms and manner for depositing with said City Treasurer all sums due the City from the operation of its Parking System.

The City shall file with the Original Purchaser, and shall mail in each year to any Registered Owner or Owners of Bonds requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses and Net Revenues derived from the Parking System.

(B) A balance sheet statement showing all deposits in all the funds provided for in the Ordinance, and the status of all said funds.

The City shall also, at least once a year, cause the books, records and accounts of the Parking System to be completely audited by the State Tax Commissioner or any successor to that function or by an Independent Accountant, and shall mail upon request, and make available generally, the audit report, or a summary thereof, to any Registered Owner or Owners of Bonds issued pursuant to the Ordinance who has so requested in writing.

Services Rendered to the City

The City will not render or cause to be rendered any free parking or services of any nature by the Parking System, nor will any preferential rates be established for users thereof of the same class; and in the event the City shall authorize any board, department, agency, instrumentality, officer or employee of said City to avail itself or themselves of the facilities or services provided by the Parking System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like service under similar circumstances shall be charged said City, board, department, agency, instrumentality, officer or employee of said City, and such charges shall be paid as they accrue, and the City shall transfer from its general funds sums sufficient to pay such charges. The revenues so received shall be deemed to be revenues derived from the operation of the Parking System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the Parking System.

Annual Operating Budget

The City shall include in its annual budget adopted prior to the beginning of each Fiscal Year, and as a separate part thereof, a detailed estimate of the expenditures for operation and maintenance of the Parking System during such succeeding fiscal year. No expenditures for the operation and maintenance of the Parking System shall be made in any fiscal year in excess of the amount provided therefor in such budget without a written finding and recommendation by the general manager of such Parking System or other duly authorized officer in charge thereof, which finding and recommendation shall state in detail the purpose of and necessity for such additional expenditures for the operation and maintenance of the Parking System, and no such additional expenditures shall be made until the City Council shall have approved such finding and recommendation and shall have authorized such additional expenditures by a resolution duly adopted. No additional expenditures in excess of ten per centum (10%) of the amount of such budget shall be made except upon the further certificate of the Parking Facilities Committee that such additional expenditures are necessary for the continued operation of said Parking System.

Enforcement of Collection

The City will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the Parking 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 charter of said City and by laws of the State.

Relocation of Parking Meters

The City will maintain parking meters on all streets where such parking meters are located and maintained on the date of enactment of the Ordinance and will not remove or relocate said parking meters unless such removal or relocation shall be recommended and approved by the officials of the City having authority to designate the location of parking meters, where such removal, relocation or substitution will materially lessen the revenues obtained from the operation of said parking meters. The covenant shall not be construed so as to prevent the removal or relocation of parking meters where such removal or relocation is made necessary by street widening or street crossings nor shall said covenant prevent the substitution, removal, relocation or change in location of parking meters necessary, essential and required for proper traffic regulations and control.

Schedule of Rates

The rates, rentals, fees and other charges for the use of the services and facilities of said Parking System, established under an ordinance previously enacted by the City, shall constitute the initial schedule of rates for said Parking System.

The City further covenants that rates, rentals, fees or other charges will be charged and collected as long as the Bonds issued hereunder, and the interest thereon are outstanding and unpaid, on all metered On-Street and Off-Street Parking Facilities for which rates, fees, rentals or other charges are now fixed, established and collected; and on any additional metered On-Street or Off-Street Parking Facilities for which parking meters are hereafter acquired and installed in or on the streets of the City.

Said initial schedule of rates shall not be reduced, nor shall any subsequent schedule of rates be at any time reduced, unless the following conditions have been complied with:

(1) That all current payments, including any deficiencies for prior payments into all the funds provided for in the Ordinance have been made in full to the end of the then Fiscal Year.

(2) That an Independent Accountant shall certify that the proposed new schedule of rates will in each year thereafter produce sufficient Net Revenues, as defined in the Ordinance, from said Parking System to equal one hundred fifteen per centum (115%) of the largest amount of principal of and interest on said Bonds which will mature and become due in any ensuing year, and on any parity additional Bonds theretofore issued and then Outstanding, or if it is then proposed that parity additional Bonds be issued, to equal one hundred fifteen centum (115%) of the largest amount of principal of and interest on said Bonds which will mature and become due in any ensuing year, and on any parity additional Bonds theretofore issued and then Outstanding and those proposed to be issued, and in either event, 115% of any other obligations then Outstanding which are payable from the Net Revenues of the Parking System.

No Competing Facilities

The City hereby irrevocably covenants that it will not construct or acquire any on-street or off-street parking facilities for which no fees or other charges are fixed, established and collected and which will be competitive with the On-Street or Off-Street Parking Facilities of said Parking System; Provided, That the City may designate certain streets or areas of the City as special parking areas upon a certification from the Parking Facilities Committee that (1) such special designated parking area is not competing with the Parking System, (2) that the City is current on all payments required hereunder, and (3) that the number of spaces in such areas do not exceed 2% of the total parking spaces in the Parking System. Notwithstanding the provisions set forth above, the City may from time to time offer promotional free parking in designated areas, provided that no such promotions shall exceed 30 consecutive days, and the City may from time to time provide special event parking rates.

Defaults and Remedies

Events of Default

Each of the following events shall constitute an "Event of Default" with respect to the Bonds.

(A) If default occurs in the due and punctual payment of the principal of or interest on any Bonds;

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in the Ordinance, the Supplemental Resolution or in the Bonds and such default shall have continued for a period of 30 days after the City shall have been given written notice of such default by the Depository Bank holding any fund or account hereunder or a Registered Owner of a Bond; or

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Remedies

Any Registered Owner of Bonds issued under the provisions of the Ordinance or any trustee acting for such Bondholders in the manner hereinafter provided, may either at law or in equity, by suit, action, mandamus or other proceeding at any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted and contained in the Ordinance, and may enforce and compel the performance of all duties required by the Ordinance or by any applicable statutes to be performed by the City or by any officer thereof, including the fixing, charging and collecting of rates, fees, rentals or charges for the services and facilities of the Parking System.

In the event that default shall be made in the payment of the interest on or the principal of any of the Bonds issued pursuant to the Ordinance as the same shall become due, or in the making of the payments into any reserve or sinking fund or any other payments required to be made by the Ordinance, or in the event that the City or any officer, agent or employee thereof shall fail or refuse to comply with provisions of the Ordinance, or shall default in any covenant made herein, and in the further event that any such default shall continue for a period of thirty days, any Registered Owner of such Bonds or any trustee appointed to represent Bondholders as hereinafter provided shall be entitled as of right to appointment of a receiver of the Parking System in an appropriate judicial proceeding in a court of competent jurisdiction, whether or not such Registered Owner or trustee is also seeking or shall have sought to enforce any other right or exercise any other remedy in connection with Bonds issued pursuant to the Ordinance.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of said Parking 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 shall exercise all the rights and powers of the City with respect to said facilities as the City itself might do. Such receiver shall collect and receive all revenues, maintain and operate such facilities in the manner provided in the Ordinance and comply under the jurisdiction of the court appointing such receiver, with all of the provisions of the Ordinance.

Whenever all that is due upon the Bonds issued pursuant to the Ordinance and interest thereon, and under any covenants of the 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 Parking System, shall have been paid and made good, and all defaults under the provisions of the Ordinance shall have been cured and made good, possession of the Parking System shall be surrendered to the City upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of Bonds issued pursuant to the Ordinance, or any trustee appointed for Bondholders as hereinafter provided, shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver shall in the performance of the powers hereinabove conferred upon him 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 appointed in the discretion of such court. Nothing contained in the Ordinance 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 in the Ordinance.

Any receiver appointed as provided herein shall hold and operate the Parking System in the name of the City and for the joint protection and benefit of the City and Registered Owners of Bonds issued pursuant to the Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging to pertaining to the Parking System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the Parking System, for the sole purpose of the protection of both the City and Bondholders, and the curing and making good of any default under the provisions of the Ordinance,

and the title to and ownership of said Parking System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the Parking System.

The Registered Owner or Owners of Bonds in an aggregate principal amount of not less than twenty-five per centum (25%) of Bonds issued under the Ordinance then Outstanding may be a duly executed certificate in writing appointing a trustee for Registered Owners of Bonds issued pursuant to the Ordinance with authority to represent such Bondholders in any legal proceedings for the enforcement and protection of the rights of such Bondholders. Such certificate shall be executed by such Bondholders or their duly authorized attorneys or representatives, and shall be filed in the office of the City Clerk.

Investment of Funds

Any moneys held as a part of the funds and accounts created by the 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 written direction of the City in any Qualified Investments to the fullest extent possible under applicable laws, the Ordinance, the need for such moneys for the purposes set forth in the Ordinance.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by Section 7.01 of the Ordinance through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Restrictions as to Arbitrage Bonds

The City covenants that (i) it will restrict the use of the proceeds of the Series 2005 Bonds in such manner and to such extent as may be necessary, so that the Series 2005 Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and the Regulations prescribed thereunder, 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 2005 Bonds) so that the interest on the Series 2005 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.

Modification of Amendment

Prior to issuance of the Series 2005 Bonds, the Ordinance may be amended or supplemented in any way by the Supplemental Resolution. All provisions required by the Bond Insurer, if any, shall be set forth in the Supplemental Resolution and to the extent they constitute an amendment or modification of the Ordinance, shall be controlling. Following issuance of the Series 2005 Bonds, the Ordinance and any Supplemental Resolution may be amended or modified without the consent of any Registered Owner or other person, solely for the purpose of maintaining the tax-exempt status of the Series 2005 Bonds, provided that, in the event any of the Bonds are insured, no such amendment or modification which adversely affects the security for such Bonds or the rights of the applicable Bond Insurer for such Bonds may be effected without the written consent of such Bond Insurer. Otherwise, no materially adverse amendment or modification to the Ordinance, or of any Supplemental Resolution, may be made without the written consent of the Registered Owners of the Bonds then Outstanding and affected thereby and the Bond Insurer. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Bond without the express written consent of the Registered Owner of such Bond, nor reduce the percentage of Bonds required for consent to any such modification or amendment.

Defeasance of Bonds

If the City shall pay or cause to be paid, or there shall otherwise be paid, to the respective Registered Owners of all the Series 2005 Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in the Ordinance, then the Ordinance and the pledges of the Net Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the City on behalf of the Registered Owners of the Series 2005 Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied, except as may be necessary to assure the exclusion of interest on the Series 2005 Bonds from gross income for federal income tax purposes.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the Ordinance. All Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the Ordinance if there shall have been deposited with the Commission or an escrow trustee either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on said Bonds on and prior to the maturity date thereof, or if the City irrevocably determines to redeem any of said Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the Commission or an escrow trustee pursuant to the Ordinance nor principal or interest payments on any such securities shall be withdrawn or used for any purpose

other than, and shall be held in trust for, the payment of the principal of and interest on said Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the City as received by the Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of the Ordinance, securities shall mean and include only Government Obligations or such additional securities as shall be set forth in the Supplemental Resolution.

# APPENDIX C

Audited Financial Statements City of Charleston

AUDIT REPORT OF THE
MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

# AUDIT REPORT OF THE
# MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
# FOR THE FISCAL YEAR ENDED JUNE 30, 2003

This audit has been conducted pursuant to the authority and duty of the State Auditor as Chief Inspector and Supervisor of Public Offices to conduct an annual inspection of all political subdivisions of the State of West Virginia and any agency created by these subdivisions. This power is granted by West Virginia Code 6-9-1 et seq.

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF FUNDS INCLUDED IN REPORT
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

## GOVERNMENTAL FUND TYPES

### MAJOR FUNDS

General
Coal Severance Tax
HOME
Civic Center
Parking System

### NONMAJOR FUNDS

*Special Revenue Funds*
Municipal Stabilization
Community Development
Supportive Housing
FEMA Flood Recovery
Municipal Beautification
Special Demolition
Sister Cities
Solid Waste
Police & Fire Donations
Asset Forfeiture
Municipal Court
Human Rights
Rental Rehabilitation
Department of Transportation Grant
Local Law Enforcement Block Grant
Metro Loan
Police Grants

*Capital Projects Funds*
Infrastructure
Bridge
South Side Bridge Ramp
South Side Recreation
Civic Center Project
Civic Center Capital Improvement
Municipal Auditorium Capital Improvement
Center for Arts & Sciences
Soccer Field
General Maintenance
Public Safety

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF FUNDS INCLUDED IN REPORT(CONTINUED)
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

*Debt Service Fund*
Sinking Fund

*Permanent Fund*
Springhill Cemetery

**FIDUCIARY FUND TYPES**

*Agency Funds*
Metro Drug Enforcement Task Force
Pending Forfeiture
Civic Center Ticket
Police Asset & Liability

*Pension Funds*
Policemen's Pension and Relief
Firemen's Pension and Relief

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
TABLE OF CONTENTS
FOR THE FISCAL YEAR ENDED JUNE 30, 2003


Pages

**INTRODUCTORY SECTION**

Municipal Officials . . . . . 1

**FINANCIAL SECTION**

Independent Auditor's Report . . . . . 2 - 3

*Government-wide Financial Statements:*

Statement of Net Assets . . . . . 4 - 5
Statement of Activities . . . . . 6

*Fund Financial Statements:*

Balance Sheet-Governmental Funds . . . . . 7
Reconciliation of the Balance Sheet-Governmental Funds to the Statement of Net Assets . . . . . 8
Statement of Revenues, Expenditures and Changes in Fund Balances - Governmental Funds . . . . . 9-10
Reconciliation of the Statement of Revenues, Expenditures and Changes in Fund Balances of Governmental Funds to the Statement of Activities . . . . . 11
Statement of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual - General Fund . . . . . 12-13
Statement of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual - Coal Severance Tax Fund . . . . . 14
Statement of Net Assets - Proprietary Funds . . . . . 15-17
Statement of Revenues, Expenses and Changes in Fund Net Assets - Proprietary Funds . . . . . 18
Statement of Cash Flows - Proprietary Funds . . . . . 19-20
Statement of Fiduciary Net Assets - Fiduciary Funds . . . . . 21
Statement of Changes in Fiduciary Net Assets - Fiduciary Funds . . . . . 22

*Notes to the Financial Statements* . . . . . 23-49

*Required Supplementary Information:*
Schedules of Funding Progress- Policemen's and Firemen's Pension and Relief Funds . . . . . 50

**COMBINING AND INDIVIDUAL FUND STATEMENTS**

Combining Balance Sheet - Nonmajor Governmental Funds . . . . . 51
Combining Statement of Revenues, Expenditures and Changes in Fund Balances - Nonmajor Governmental Funds . . . . . 52-53

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
TABLE OF CONTENTS (CONTINUED)
FOR THE FISCAL YEAR ENDED JUNE 30, 2003


| | Pages |
|---|---|
| Combining Balance Sheet - Nonmajor Governmental - Special Revenue Funds | 54-56 |
| Combining Statement of Revenues, Expenditures and Changes in Fund Balances - Nonmajor Governmental - Special Revenue Funds | 57-59 |
| Combining Balance Sheet - Nonmajor Governmental - Capital Projects Funds | 60-61 |
| Combining Statement of Revenues, Expenditures and Changes in Fund Balances - Nonmajor Governmental - Capital Projects Funds | 62-63 |
| Combining Statement of Fiduciary Net Assets - Agency Funds | 64 |
| Combining Statement of Plan Net Assets - Pension Trust Funds | 65 |
| Combining Statement of Changes in Plan Net Assets - Pension Trust Funds | 66 |

**SINGLE AUDIT REPORTING PACKAGE**

| | |
|---|---|
| Report on Compliance and on Internal Control over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards* | 67-68 |
| Report on Compliance with Requirements Applicable to Each Major Program and on Internal Control over Compliance in Accordance with OMB Circular A-133 and Supplementary Schedule of Expenditures of Federal Awards | 69-70 |
| Schedule of Expenditures of Federal Awards | 71-73 |
| Notes to the Schedule of Expenditures of Federal Awards | 74 |
| Schedule of Findings and Questioned Costs | 75-77 |
| Corrective Action Plan | 78 |
| Summary Schedule of Prior Audit Findings | 79 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
MUNICIPAL OFFICIALS
For the Fiscal Year Ended June 30, 2003

| OFFICE | NAME | TERM |
|---|---|---|
| | **Elective** | |
| Mayor: | Jay Goldman | 06-21-99 / 6-21-03 |
| | Danny Jones | 06-21-03 / 6-21-07 |
| Treasurer: | Chris Smith | 06-21-99 / 6-21-03 |
| | Victor Grigoraci | 06-21-03 / 6-21-07 |
| Municipal Judge: | Carole Bloom | 06-21-99 / 6-21-03 |
| | | 06-21-03 / 6-21-07 |

## Council Members

| June 21, 1999 to June 21, 2003 | | June 21, 2003 to June 21, 2007 | |
|---|---|---|---|
| John Chamock | Kenneth McKnight | Archie Chestnut | Ditty L. Markham |
| Sara Crickenberger | Ditty Markham | Michael Clowser | John Miller, Jr. |
| Mary Jean Davis | David D. Molgaard | Mary Jean Davis | Paul James Monroe |
| Bobby Haas | Betty Morton | Harry Deitzler | Betty Morton |
| Jim Harris, Jr. | Linda Nielsen | Geneva Foster | Linda M. Nielsen |
| Ryan Henry | Fred Pettry | Cheryle Hall | Teresa"Tricky" Reed |
| Patrick Jones | Donna Prunty | William Hanna | Bobby Reishman |
| William "Bill" Kimberling | Y. Howard Quick, Jr. | Jim Harris, Jr. | Brenda H. Robertson |
| Henry Knauff | Bobby Reishman | Jack E. Harrison | Mark A. Sadd |
| J. Thomas Lane | Larry L. Roller | David Kent Higgins | Edward Talkington |
| David Lanham | Fred Snuffer | Patrick Jones | Jerry L. Ware |
| James "Moses" Lanham | Edward Talkington | J. Thomas Lane | Marc Weintraub |
| Charles W. Loeb, Jr. | Beth Fouty Young | James "Moses" Lanham | Bob White |
| Mary Jane Lopez | Mark Weintraub | Charles W. Loeb, Jr. | |

## Appointed

| | | | |
|---|---|---|---|
| City Manager: | Sherry Risk<br>David Molgaard | Mayor Assistant: | Nancy Dodson<br>Rod Blackstone |
| Finance Director: | Ronald L. Eddy | City Collector: | Ken Guthrie |
| City Clerk: | James Reishman | City Engineer: | Lee McCoy<br>Chris Knox |
| Attorney: | Kim Weber<br>Delores Martin | Economic & Community Development Director: | Janet Mathews |
| City Auditor: | Brenda J. Lemon, CPA | | |

*FINANCIAL SECTION*

# State of West Virginia

Office of the State Auditor
1900 Kanawha Boulevard, East
State Capitol Complex, Building 1, Room W-100
Charleston, West Virginia 25305

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State Auditor

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## *INDEPENDENT AUDITOR'S REPORT*

Honorable Mayor and Council
Municipality of Charleston
Charleston, West Virginia 25330

We have audited the accompanying financial statements of the governmental activities, the business-type activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of the Municipality of Charleston, West Virginia as of and for the year ended June 30, 2003, which collectively comprise the municipality's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the Municipality of Charleston's management. Our responsibility is to express opinions on these financial statements based on our audit. We did not audit the financial statements of the Charleston Sanitary Board, the discretely presented component unit. Those financial statements were audited by other auditors whose report thereon has been furnished to us, and our opinion, insofar as it relates to the amounts included for the Charleston Sanitary Board is based on the report of the other auditors.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit and the report of other auditors provides a reasonable basis for our opinions.

As discussed in the report of the other auditors, the Sanitary Board of the City of Charleston's sewer system donated by the City on July 1, 1952, is recorded at a nominal value of $1. In the other auditor's opinion, these assets should be recorded at fair market value at date of receipt and depreciated over their useful life to conform with accounting principles generally accepted in the United States of America.

In our opinion, based on our audit and the report of other auditors, except for the effects of such adjustments, if any, as might have been necessary because of the Sanitary Board not properly reflecting donated fixed assets on the financial statements as described in the preceding paragraph, the financial statements referred to above present fairly, in all material respects, the respective financial position of the discretely presented component unit of the Municipality of Charleston, West Virginia, as of June 30, 2003, and the respective changes in financial position , where applicable, thereof for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In addition, in our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Municipality of Charleston, West Virginia, as of June 30, 2003, and the respective changes in financial position and cash flows, where applicable, thereof and the respective budgetary comparison for the General Fund and Coal Severance Tax Special Revenue Fund for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated February 5, 2004 on our consideration of the municipality's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grants. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

As described in Note I-B, the Municipality of Charleston, West Virginia has implemented a new financial reporting model, as required by the provisions of GASB Statement No. 34, *Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments*, as of June 30, 2003.

The Municipality of Charleston, West Virginia has not presented the Management's Discussion and Analysis that the Governmental Accounting Standards Board has determined is necessary to supplement, although not required to be part of, the basic financial statements. The information related to the funding of the defined benefit pension trust funds, on page 62, is not a required part of the basic financial statements, but is supplementary information required by the Governmental Accounting Standards Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Municipality of Charleston, West Virginia's basic financial statements. The combining and individual nonmajor fund financial statements are presented for purposes of additional analysis and are not a required part of the basic financial statements. The combining and individual fund financial statements have been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, are fairly stated in all material respects in relation to the basic financial statements taken as a whole.

Respectfully submitted,

Glen B. Gainer III
West Virginia State Auditor

February 5, 2004

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF NET ASSETS
June 30, 2003

| | Primary Government | | | Component Unit |
|---|---|---|---|---|
| | Governmental Activities | Business-type Activities | Total | Sanitary Board |
| **ASSETS** | | | | |
| Current assets: | | | | |
| Cash and cash equivalents | $ 10,449,003 | $ 157,298 | $ 10,606,301 | $ 2,340,377 |
| Investments | 973,658 | -- | 973,658 | -- |
| Receivables - net | | | | |
| Accounts | 9,345,777 | 94,518 | 9,440,295 | 1,083,209 |
| Accrued interest | 12,415 | -- | 12,415 | -- |
| Taxes | 182,143 | -- | 182,143 | -- |
| Loans | 4,266,664 | -- | 4,266,664 | -- |
| Grants | 98,725 | -- | 98,725 | -- |
| Internal balances | 220,113 | ( 220,113) | -- | -- |
| Due from: | | | | |
| Component units | 500 | -- | 500 | -- |
| Other governments | 16,808 | -- | 16,808 | -- |
| Prepaid expenses | 855,207 | 137,596 | 992,803 | 192,736 |
| Restricted assets: | | | | |
| Regular account | -- | 2,390,528 | 2,390,528 | -- |
| Renewal and replacement | -- | 1,228,491 | 1,228,491 | -- |
| Restricted cash | 1,162,051 | -- | 1,162,051 | 2,932,047 |
| Reserve for construction | -- | 91,014 | 91,014 | -- |
| Capital assets: | | | | |
| Land | 2,903,627 | 3,105,936 | 6,009,563 | 755,987 |
| Buildings and improvements | 20,065,495 | 60,321,670 | 80,387,165 | -- |
| Structures and improvements | 10,193,886 | -- | 10,193,886 | 8,270,588 |
| Infrastructure | 60,491,297 | -- | 60,491,297 | -- |
| Transmission and distribution | -- | -- | -- | 66,530,085 |
| Machinery and equipment | 22,820,897 | 1,399,815 | 24,220,712 | 3,932,458 |
| Construction in progress | 5,088,283 | 844,921 | 5,933,204 | 2,679,008 |
| Sewer system | -- | -- | -- | 1 |
| Less: accumulated depreciation | ( 58,819,905) | ( 35,599,356) | ( 94,419,261) | ( 32,887,397) |
| Other debits: | | | | |
| Unamortized bond issue costs | 26,421 | -- | 26,421 | 125,911 |
| Total assets | $ 90,353,065 | $ 33,952,318 | $ 124,305,383 | $ 55,955,010 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF NET ASSETS
June 30, 2003

| | Primary Government | | | Component Unit |
|---|---|---|---|---|
| | Governmental Activities | Business-type Activities | Total | Sanitary Board |
| **LIABILITIES** | | | | |
| Current liabilities payable from current assets: | | | | |
| Accounts payable | $ 1,139,342 | $ 73,965 | $ 1,213,307 | $ 517,030 |
| Payroll payable | 1,190,706 | 73,384 | 1,264,090 | -- |
| Other accrued expenses | 277,238 | 41,669 | 318,907 | -- |
| Leases payable | -- | -- | -- | 233,990 |
| Benefits payable | 49,545 | -- | 49,545 | -- |
| Reserve for future insurance claims | 655,000 | -- | 655,000 | -- |
| Due to: | | | | |
| Primary government | -- | -- | -- | 500 |
| Current liabilities payable from restricted assets: | | | | |
| Accrued bond interest payable | 944,313 | 152,219 | 1,096,532 | 235,447 |
| Customer deposits | -- | 43,493 | 43,493 | -- |
| Deferred revenues: | | | | |
| Charges for services | -- | 835 | 835 | -- |
| Unearned revenue | 4,005,803 | -- | 4,005,803 | -- |
| Noncurrent liabilities:(note IV.F.) | | | | |
| Due within one year | 14,220,909 | 972,504 | 15,193,413 | 1,768,564 |
| Due in more than one year | 28,184,545 | 19,592,873 | 47,777,418 | 20,175,191 |
| Total liabilities | 50,667,401 | 20,950.942 | 71,618,343 | 22,930,722 |
| **NET ASSETS** | | | | |
| Invested in capital assets (net of related debt) | 48,864,912 | 9,576,130 | 58,441,042 | 27,835,997 |
| Restricted for: | | | | |
| Debt service | 2,224,872 | 3,710,033 | 5,934,905 | 2,404,800 |
| Capital projects | 3,205,031 | -- | 3,205,031 | -- |
| Community development projects | 3,613,282 | -- | 3,613,282 | -- |
| Public safety | 635,160 | -- | 635,160 | -- |
| Perpetual care: | | | | |
| Expendable | 396,482 | -- | 396,482 | -- |
| Nonexpendable | 818,985 | -- | 818,985 | -- |
| Unrestricted | ( 20,073,060) | ( 284,787) | ( 20,357,847) | 2,783,491 |
| Total net assets | $ 39,685,664 | $ 13,001,376 | $ 52,687,040 | $ 33,024,288 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF ACTIVITIES
For the Fiscal Year Ended June 30, 2003

| Functions / Programs | Expenses | Program Revenues: Charges for Services | Program Revenues: Operating Grants and Contributions | Program Revenues: Capital Grants and Contributions | Net (Expense) Revenues and Changes in Net Assets: Primary Government: Governmental Activities | Primary Government: Business-type Activities | Primary Government: Total | Component Unit: Sanitary Board |
|---|---|---|---|---|---|---|---|---|
| **Primary Government:** | | | | | | | | |
| Governmental activities: | | | | | | | | |
| General government | $ 16,007,554 | $ 12,212,222 | $ 1,194,027 | $ 1,618,772 | $ ( 982,533) | $ -- | $ ( 982,533) | $ -- |
| Public safety | 31,452,519 | 22,898 | 269,382 | 301,214 | ( 30,859,025) | -- | ( 30,859,025) | -- |
| Streets and transportation | 5,535,598 | -- | -- | -- | ( 5,535,598) | -- | ( 5,535,598) | -- |
| Health and sanitation | 4,021,705 | -- | -- | -- | ( 4,021,705) | -- | ( 4,021,705) | -- |
| Culture and recreation | 4,786,629 | 56,114 | -- | 5,748 | ( 4,724,767) | -- | ( 4,724,767) | -- |
| Social services | 803,574 | -- | 97,198 | 5,041 | ( 701,335) | -- | ( 701,335) | -- |
| Economic development | 1,814,596 | -- | 1,860,580 | 1,141,787 | 1,187,771 | -- | 1,187,771 | -- |
| Administrative and general | 24,095 | -- | -- | -- | ( 24,095) | -- | ( 24,095) | -- |
| Interest on long-term debt | 972,348 | -- | -- | -- | ( 972,348) | -- | ( 972,348) | -- |
| Total governmental activities | 65,418,618 | 12,291,234 | 3,421,187 | 3,072,562 | ( 46,633,635) | -- | ( 46,633,635) | -- |
| Business type activities: | | | | | | | | |
| Civic center | 3,703,883 | 2,216,525 | -- | 5,253 | -- | ( 1,482,105) | ( 1,482,105) | -- |
| Parking system | 3,601,138 | 2,743,502 | -- | -- | -- | ( 857,636) | ( 857,636) | -- |
| Total business type activities | 7,305,021 | 4,960,027 | -- | 5,253 | -- | ( 2,339,741) | ( 2,339,741) | -- |
| Total primary government | $ 72,723,639 | $ 17,251,261 | $ 3,421,187 | $ 3,077,815 | $ ( 46,633,635) | $ ( 2,339,741) | $ ( 48,973,376) | $ -- |
| Component unit: | | | | | | | | |
| Sanitary board | $ 9,048,405 | $ 10,132,183 | $ -- | $ -- | $ -- | $ -- | $ -- | $ 1,083,778 |
| Total component unit | $ 9,048,405 | $ 10,132,183 | $ -- | $ -- | $ -- | $ -- | $ -- | $ 1,083,778 |
| General revenues: | | | | | | | | |
| Property taxes | | | | | $ 10,800,459 | $ -- | $ 10,800,459 | $ -- |
| Other taxes | | | | | 35,326,363 | -- | 35,326,363 | -- |
| Unrestricted investment earnings | | | | | 118,440 | 112,953 | 231,393 | 68,523 |
| Contributions from other entities | | | | | 15,766 | -- | 15,766 | -- |
| Gain(loss) on sale of capital assets | | | | | 100,251 | ( 2,947) | 97,304 | -- |
| Miscellaneous | | | | | 15,446 | | 15,446 | 33,767 |
| Transfers | | | | | ( 1,810,573) | 1,810,573 | -- | -- |
| Total general revenues and transfers | | | | | 44,566,152 | 1,920,579 | 46,486,731 | 102,290 |
| Change in net assets | | | | | ( 2,067,483) | ( 419,162) | ( 2,486,645) | 1,186,068 |
| Net assets - beginning | | | | | 41,753,147 | 13,420,538 | 55,173,685 | 31,838,220 |
| Net assets - ending | | | | | $ 39,685,664 | $ 13,001,376 | $ 52,687,040 | $ 33,024,288 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
BALANCE SHEET - GOVERNMENTAL FUNDS
June 30, 2003

| | General | Coal Severance Tax | HOME | Other nonmajor Governmental Funds | Total Governmental Funds |
|---|---|---|---|---|---|
| **ASSETS** | | | | | |
| **Current:** | | | | | |
| Cash and cash equivalents | $ 4,598,989 | $ 29,178 | $ 19,561 | $ 5,801,275 | $ 10,449,003 |
| Investments | -- | -- | -- | 973,658 | 973,658 |
| Receivables - net: | | | | | |
| Taxes | -- | -- | -- | 91,897 | 91,897 |
| Accounts | 8,913,026 | -- | -- | 432,751 | 9,345,777 |
| Grants | -- | -- | -- | 98,725 | 98,725 |
| Loans | -- | -- | 2,466,881 | 1,799,783 | 4,266,664 |
| Accrued interest | -- | -- | -- | 12,415 | 12,415 |
| Due from: | | | | | |
| Other funds | 727,263 | -- | -- | 49,121 | 776,384 |
| Other governments | 16,808 | -- | -- | -- | 16,808 |
| Component units | 500 | -- | -- | -- | 500 |
| Prepaid expenses | 855,207 | -- | -- | -- | 855,207 |
| Restricted cash | -- | -- | -- | 1,162,051 | 1,162,051 |
| Intergovernmental receivable-restricted | -- | -- | -- | -- | -- |
| Total assets | 15,111,793 | 29,178 | 2,486,442 | 10,421,676 | 28,049,089 |
| **LIABILITIES AND FUND BALANCES** | | | | | |
| **Liabilities:** | | | | | |
| Accounts payable | 754,982 | -- | 2,420 | 381,940 | 1,139,342 |
| Payroll payable | 1,190,706 | -- | -- | -- | 1,190,706 |
| Other accrued expenses | 277,238 | -- | -- | -- | 277,238 |
| Benefits payable | 49,545 | -- | -- | -- | 49,545 |
| Reserve for future insurance claims | 655,000 | -- | -- | -- | 655,000 |
| Due to: | | | | | |
| Other funds | 393,784 | -- | 7,243 | 155,246 | 556,273 |
| Deferred revenue | 234,537 | -- | 2,477,717 | 1,293,549 | 4,005,803 |
| Total liabilities | 3,555,792 | -- | 2,487,380 | 1,830,735 | 7,873,907 |
| **Fund balances:** | | | | | |
| Reserved for: | | | | | |
| Encumbrances | 786,001 | -- | -- | -- | 786,001 |
| Perpetual care | -- | -- | -- | 1,207,367 | 1,207,367 |
| Debt service | -- | -- | -- | 2,536,961 | 2,536,961 |
| Community development | -- | -- | (938) | 2,063,769 | 2,062,831 |
| Capital projects | -- | -- | -- | 2,194,158 | 2,194,158 |
| Public safety | -- | 29,178 | -- | 138,083 | 167,261 |
| Unreserved, reported in: | | | | | |
| General fund | 10,770,000 | -- | -- | -- | 10,770,000 |
| Special revenue funds | -- | -- | -- | 450,603 | 450,603 |
| Total fund balances | 11,556,001 | 29,178 | (938) | 8,590,941 | 20,175,182 |
| Total liabilities and fund balances | $ 15,111,793 | $ 29,178 | $ 2,486,442 | $ 10,421,676 | $ 28,049,089 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
RECONCILIATION OF BALANCE SHEET - GOVERNMENTAL FUNDS
TO THE STATEMENT OF NET ASSETS
June 30, 2003

| | | |
|---|---|---|
| Total fund balances on the governmental fund's balance sheet | $ | 20,175,182 |
| Amounts reported for governmental activities in the statement of net assets are different because: | | |
| Capital assets used in governmental activities are not financial resources and, therefore not reported in the funds. | | 62,743,580 |
| Other long-term assets are not available to pay for current-year expenditures and, therefore, are deferred in the funds. | | 90,247 |
| Deferral of bond issuance cost for bonds issued during the fiscal year that will be amortized over the life of the bonds which is not reported in the funds. | | 26,421 |
| Long-term liabilities, including bonds payable, are not due and payable in the current period and therefore are not reported in the funds (note II.A.) | | ( 43,349,766) |
| Net assets of governmental activities | $ | 39,685,664 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES -
GOVERNMENTAL FUNDS
For the Fiscal Year Ended June 30, 2003

| | General | Coal Severance Tax | HOME | Other nonmajor Governmental Funds | Total Governmental Funds |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| Taxes: | | | | | |
| Ad valorem property taxes | $ 8,306,280 | $ -- | $ -- | $ 2,494,176 | $ 10,800,456 |
| Business & occupation tax | 31,619,878 | -- | -- | -- | 31,619,878 |
| Alcoholic beverages tax | 371,664 | -- | -- | -- | 371,664 |
| Utility services tax | 1,828,767 | -- | -- | -- | 1,828,767 |
| Hotel occupancy tax | 1,042,551 | -- | -- | -- | 1,042,551 |
| Amusement tax | 264,742 | -- | -- | -- | 264,742 |
| Other taxes | 22,905 | -- | -- | -- | 22,905 |
| Licenses and permits | 1,300,538 | -- | -- | -- | 1,300,538 |
| Intergovernmental: | | | | | |
| Federal | 748,846 | -- | 427,217 | 5,347,036 | 6,523,099 |
| State | -- | 114,591 | -- | 25,593 | 140,184 |
| Local | -- | -- | -- | 20,602 | 20,602 |
| Charges for services | 5,983,518 | -- | -- | 3,870,893 | 9,854,411 |
| Fines and forfeits | 2,240 | -- | -- | 734,757 | 736,997 |
| Interest and investment earnings | 10,000 | 65 | 117 | 243,353 | 253,535 |
| Reimbursements | -- | -- | -- | 54,773 | 54,773 |
| Contributions and donations | -- | -- | -- | 55,846 | 55,846 |
| Miscellaneous | 861,803 | -- | -- | 115,278 | 977,081 |
| Total revenues | 52,363,732 | 114,656 | 427,334 | 12,962,307 | 65,868,029 |
| **EXPENDITURES:** | | | | | |
| Current: | | | | | |
| General government | 11,274,642 | -- | -- | 17,064 | 11,291,706 |
| Public safety | 26,666,833 | -- | -- | 1,007,034 | 27,673,867 |
| Streets and transportation | 5,983,320 | -- | -- | 9,578 | 5,992,898 |
| Health and sanitation | 2,956,287 | -- | -- | 1,047,241 | 4,003,528 |
| Administrative and general | -- | -- | -- | 13,806 | 13,806 |
| Culture and recreation | 4,295,031 | -- | -- | 36,740 | 4,331,771 |
| Social services | 547,784 | -- | -- | 231,508 | 779,292 |
| Capital projects | -- | -- | -- | 4,871,264 | 4,871,264 |
| Economic development | -- | -- | 427,334 | 4,455,237 | 4,882,571 |
| Debt service: | | | | | |
| Principal | -- | -- | -- | 1,740,766 | 1,740,766 |
| Interest | -- | -- | -- | 879,354 | 879,354 |
| Total expenditures | 51,723,897 | -- | 427,334 | 14,309,592 | 66,460,823 |
| Excess (deficiency) of revenues over (under) expenditures | 639,835 | 114,656 | -- | ( 1,347,285) | ( 592,794) |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES -
GOVERNMENTAL FUNDS
For the Fiscal Year Ended June 30, 2003

| | General | Coal Severance Tax | HOME | Other nonmajor Governmental Funds | Total Governmental Funds |
|---|---|---|---|---|---|
| **OTHER FINANCING SOURCES (USES)** | | | | | |
| Transfers in | $ 3,154,722 | $ -- | $ -- | $ 3,654,525 | $ 6,809,247 |
| Transfers (out) | ( 4,430,399) | ( 88,118) | -- | ( 4,101,303) | ( 8,619,820) |
| Contributions | -- | -- | -- | ( 26,014) | ( 26,014) |
| Proceeds from the sale of assets | 101,114 | -- | -- | -- | 101,114 |
| Capital leases | 1,000,000 | -- | -- | -- | 1,000,000 |
| Total other financing sources (uses) | ( 174,563) | ( 88,118) | -- | ( 472,792) | ( 735,473) |
| Excess (deficiency) of revenues and other financing | | | | | |
| Net change in fund balances | 465,272 | 26,538 | -- | ( 1,820,077) | ( 1,328,267) |
| Fund balances - beginning, as restated, (Note IV.J) | 11,090,729 | 2,640 | ( 938) | 10,411,018 | 21,503,449 |
| Fund balances - ending | $ 11,556,001 | $ 29,178 | $ ( 938) | $ 8,590,941 | $ 20,175,182 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES
For the Fiscal Year Ended June 30, 2003

Amounts reported for governmental activities in the statement of activities are different because:

| | | |
|---|---|---|
| Net change in fund balances - total governmental funds | $ | ( 1,328,267) |
| Governmental funds report capital outlays as expenditures. However in the statement of activities the costs of those assets is allocated over their estimated useful lives and reported as depreciation expense. This is the amount by which capital outlays exceeded depreciation in the current period (Note II.B). | | 4,180,135 |
| The net effect of various miscellaneous transactions involving capital assets (i.e., sales, trade-ins, and donations) is to increase net assets(Note II.B). | | 13,937 |
| Revenues in the statement of activities that do not provide current financial resources are not reported as revenues in the funds. | | 90,248 |
| The issuance of long term debt(e.g., bonds, leases) provides current financial resources to governmental funds, while the repayment of the principal of long-term debt consumes the current financial resources of governmental funds. Neither transaction, however, has any effect on net assets. Also, governmental funds report the effect of issuance costs, premiums, discounts, and similar items when debt is first issued, whereas these amounts are deferred and amortized in the statement of activities. This amount is the net effect of these differences in the treatment of long-term debt and related items (Note II.B). | | 637,474 |
| Some expenses reported in the statement of activities do not require the use of current financial resources and, therefore, are not reported as expenditures in governmental funds(Note II.B). | | ( 5,661,010) |
| Change in net assets of governmental activities | $ | ( 2,067,483) |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES
IN FUND BALANCE - BUDGET AND ACTUAL - GENERAL FUND
For the Fiscal Year Ended June 30, 2003

| | Budgeted Amounts | | | Variance with Final Budget |
|---|---|---|---|---|
| | Original | Final | Actual Amounts | Positive (Negative) |
| **REVENUES** | | | | |
| Taxes: | | | | |
| Ad valorem property taxes | $ 8,350,000 | $ 8,350,000 | $ 8,306,280 | $ ( 43,720) |
| Business & occupation tax | 29,500,000 | 30,253,761 | 31,538,581 | 1,284,820 |
| Alcoholic beverages tax | 500,000 | 500,000 | 371,664 | ( 128,336) |
| Utility services tax | 2,000,000 | 2,000,000 | 1,828,767 | ( 171,233) |
| Hotel occupancy tax | 1,000,000 | 1,000,000 | 1,042,551 | 42,551 |
| Amusement tax | 100,000 | 100,000 | 264,742 | 164,742 |
| Other taxes | 16,000 | 16,000 | 22,905 | 6,905 |
| Licenses and permits | 1,220,500 | 1,220,500 | 1,300,538 | 80,038 |
| Intergovernmental: | | | | |
| Federal | - - | - - | 748,846 | 748,846 |
| State | 740,000 | 1,152,018 | - - | ( 1,152,018) |
| Charges for services | 6,097,000 | 6,097,000 | 5,983,518 | ( 113,482) |
| Fines and forfeits | - - | - - | 2,240 | 2,240 |
| Miscellaneous | 666,000 | 901,522 | 861,803 | ( 39,719) |
| Total revenues | 50,189,500 | 51,590,801 | 52,282,435 | 691,634 |
| **EXPENDITURES** | | | | |
| Current: | | | | |
| General government | 10,569,604 | 12,902,984 | 11,274,642 | 1,628,342 |
| Public safety | 26,646,057 | 27,280,576 | 26,666,833 | 613,743 |
| Streets and transportation | 5,738,784 | 6,145,006 | 5,983,320 | 161,686 |
| Health and sanitation | 3,167,027 | 3,177,176 | 2,956,287 | 220,889 |
| Culture and recreation | 4,151,181 | 4,499,425 | 4,295,031 | 204,394 |
| Social services | 650,359 | 662,476 | 547,784 | 114,692 |
| Total expenditures | 50,923,012 | 54,667,643 | 51,723,897 | 2,943,746 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES
IN FUND BALANCE - BUDGET AND ACTUAL - GENERAL FUND
For the Fiscal Year Ended June 30, 2003

| | Budgeted Amounts | | | Variance with Final Budget |
|---|---|---|---|---|
| | Original | Final | Actual Amounts | Positive (Negative) |
| Excess (deficiency) of revenues over (under) expenditures | $ ( 733,512) | $ ( 3,076,842) | $ 558,538 | $ 3,635,380 |
| **OTHER FINANCING SOURCES (USES)** | | | | |
| Transfers in | 2,200,000 | 3,131,603 | 3,154,722 | 23,119 |
| Transfers (out) | ( 2,266,488) | ( 4,464,024) | ( 4,430,399) | 33,625 |
| Proceeds from the sale of assets | 50,000 | 50,000 | 101,114 | 51,114 |
| Capital leases | -- | 1,000,000 | 1,000,000 | -- |
| Total other financing sources (uses) | ( 16,488) | ( 282,421) | ( 174,563) | 107,858 |
| Net change in fund balance | ( 750,000) | ( 3,359,263) | 383,975 | 3,743,238 |
| Fund balances - beginning, as restated, (Note IV.J) | 750,000 | 3,359,263 | 3,359,263 | -- |
| Fund balances - ending | $ -- | $ -- | $ 3,743,238 | $ 3,743,238 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES
IN FUND BALANCE - BUDGET AND ACTUAL - COAL SEVERANCE TAX FUND
For the Fiscal Year Ended June 30, 2003

| | Budgeted Amounts | | | Variance with Final Budget |
|---|---|---|---|---|
| | Original | Final | Actual Amounts | Positive (Negative) |
| **REVENUES** | | | | |
| Taxes: | | | | |
| Intergovernmental: | | | | |
| State | $ 120,000 | $ 120,000 | $ 114,591 | $ ( 5,409) |
| Interest and investment earnings | -- | -- | 65 | 65 |
| Total revenues | 120,000 | 120,000 | 114,656 | ( 5,344) |
| Excess (deficiency) of revenues over (under) expenditures | 120,000 | 120,000 | 114,656 | ( 5,344) |
| **OTHER FINANCING SOURCES (USES)** | | | | |
| Transfers (out) | ( 120,000) | ( 120,000) | ( 88,118) | 31,882 |
| Total other financing sources (uses) | ( 120,000) | ( 120,000) | ( 88,118) | 31,882 |
| Net change in fund balance | -- | -- | 26,538 | 26,538 |
| Fund balances - beginning | -- | -- | 2,640 | 2,640 |
| Fund balances - ending | $ -- | $ -- | $ 29,178 | $ 29,178 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF NET ASSETS - PROPRIETARY FUNDS
June 30, 2003

| | Business-type Activities - Enterprise Funds | | |
|---|---|---|---|
| | Civic Center | Parking System | Totals |
| **ASSETS** | | | |
| Current: | | | |
| Cash and cash equivalents | $ 65,140 | $ 92,158 | $ 157,298 |
| Receivables - net: | | | |
| Accounts | -- | 94,518 | 94,518 |
| Due from: | | | |
| Other funds | 141 | 394,476 | 394,617 |
| Prepaid expenses | 42,337 | 95,259 | 137,596 |
| Total current assets | 107,618 | 676,411 | 784,029 |
| Restricted: | | | |
| Regular account | 322,241 | 2,068,287 | 2,390,528 |
| Renewal and replacement | -- | 1,228,491 | 1,228,491 |
| Reserve for construction | 91,014 | -- | 91,014 |
| Total restricted assets | 413,255 | 3,296,778 | 3,710,033 |
| Capital assets: | | | |
| Land | 300,000 | 2,805,936 | 3,105,936 |
| Buildings | 35,213,848 | 25,107,822 | 60,321,670 |
| Machinery and equipment | 516,553 | 883,262 | 1,399,815 |
| Construction in progress | -- | 844,921 | 844,921 |
| Less: accumulated depreciation | ( 18,759,130) | ( 16,840,226) | ( 35,599,356) |
| Total capital assets (net of accumulated depreciation) | 17,271,271 | 12,801,715 | 30,072,986 |
| Total assets | $ 17,792,144 | $ 16,774,904 | $ 34,567,048 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF NET ASSETS - PROPRIETARY FUNDS
June 30, 2003

| | Business-type Activities - Enterprise Funds | | |
|---|---|---|---|
| | Civic Center | Parking System | Totals |
| **LIABILITIES** | | | |
| Current liabilities payable from current assets: | | | |
| Accounts payable | $ 59,259 | $ 14,706 | $ 73,965 |
| Payroll payable | 36,508 | 36,876 | 73,384 |
| Other accrued expenses | 18,987 | 22,682 | 41,669 |
| Leases payable | 5,971 | 23,012 | 28,983 |
| Compensated absences payable | 36,671 | 31,850 | 68,521 |
| Due to: | | | |
| Other funds | 173,069 | 441,661 | 614,730 |
| Total current liabilities payable from current assets | 330,465 | 570,787 | 901,252 |
| Current liabilities payable from restricted assets: | | | |
| Revenue bonds payable | 220,000 | 655,000 | 875,000 |
| Accrued revenue bond interest payable | 82,761 | 69,458 | 152,219 |
| Customer deposits | 43,493 | -- | 43,493 |
| Total current liabilities payable from restricted assets | 346,254 | 724,458 | 1,070,712 |
| Deferred revenues: | | | |
| Charges for services | -- | 835 | 835 |
| Total deferred revenues | -- | 835 | 835 |
| Noncurrent liabilities: | | | |
| Bonds payable | 8,053,628 | 11,484,475 | 19,538,103 |
| Leases payable | 9,275 | 45,495 | 54,770 |
| Total noncurrent liabilities | 8,062,903 | 11,529,970 | 19,592,873 |
| Total liabilities | 8,739,622 | 12,826,050 | 21,565,672 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF NET ASSETS - PROPRIETARY FUNDS
June 30, 2003

| | Business-type Activities - Enterprise Funds | | |
|---|---|---|---|
| | Civic Center | Parking System | Totals |
| **NET ASSETS** | | | |
| Invested in capital assets (net of related debt) | $ 8,982,397 | $ 593,733 | $ 9,576,130 |
| Restricted for debt service | 413,255 | 3,296,778 | 3,710,033 |
| Unrestricted | ( 343,130) | 58,343 | ( 284,787) |
| Total net assets | $ 9,052,522 | $ 3,948,854 | $ 13,001,376 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF REVENUES, EXPENSES AND
CHANGES IN FUND NET ASSETS - PROPRIETARY FUNDS
For the Fiscal Year Ended June 30, 2003

| | Business-type Activities - Enterprise Funds | | |
|---|---|---|---|
| | Civic Center | Parking System | Totals |
| Operating revenues: | | | |
| Sales and services to customers | $ 1,316,251 | $ 2,727,030 | $ 4,043,281 |
| Rents | 900,274 | -- | 900,274 |
| Miscellaneous | 5,253 | 16,472 | 21,725 |
| Total revenues | 2,221,778 | 2,743,502 | 4,965,280 |
| Operating Expenses: | | | |
| Administrative and general | -- | 1,524,145 | 1,524,145 |
| Recreation | 2,403,291 | -- | 2,403,291 |
| Depreciation | 770,053 | 973,114 | 1,743,167 |
| Total operating expenses | 3,173,344 | 2,497,259 | 5,670,603 |
| Operating income (loss) | ( 951,566) | 246,243 | ( 705,323) |
| Nonoperating revenues (expenses): | | | |
| Interest revenue | 8,719 | 104,234 | 112,953 |
| Gain (loss) on sale of fixed assets | -- | ( 2,947) | ( 2,947) |
| Interest and fiscal charges | ( 530,539) | ( 1,103,879) | ( 1,634,418) |
| Total nonoperating revenues (expenses) | ( 521,820) | ( 1,002,592) | ( 1,524,412) |
| Income (loss) before operating transfers | ( 1,473,386) | ( 756,349) | ( 2,229,735) |
| Transfers in | 1,121,074 | 786,000 | 1,907,074 |
| Transfers(out) | ( 96,501) | -- | ( 96,501) |
| Change in net assets | ( 448,813) | 29,651 | ( 419,162) |
| Net assets at beginning of year | 9,501,335 | 3,919,203 | 13,420,538 |
| Net assets at end of year | $ 9,052,522 | $ 3,948,854 | $ 13,001,376 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF CASH FLOWS- PROPRIETARY FUNDS
For the Fiscal Year Ended June 30, 2003

| | Business-type Activities - Enterprise Funds | | |
|---|---|---|---|
| | Civic Center | Parking System | Totals |
| **Cash flows from operating activities:** | | | |
| Cash received from customers | $ 2,175,015 | $ 2,625,173 | $ 4,800,188 |
| Cash paid for goods and services | ( 1,662,534) | ( 303,249) | ( 1,965,783) |
| Cash paid to employees | ( 890,563) | ( 1,009,614) | ( 1,900,177) |
| Net cash provided (used) by operating activities | ( 378,082) | 1,312,310 | 934,228 |
| **Cash flows from noncapital financing activities:** | | | |
| Transfers in | 388,312 | - - | 388,312 |
| Net cash provided (used) by noncapital financing activities | 388,312 | - - | 388,312 |
| **Cash flows from capital and related financing activities:** | | | |
| Proceeds from capital debt | - - | 73,643 | 73,643 |
| Purchases of capital assets | ( 200,058) | ( 889,038) | ( 1,089,096) |
| Principal paid on capital debt | ( 215,650) | ( 667,004) | ( 882,654) |
| Interest paid on capital debt | ( 514,651) | ( 1,022,022) | ( 1,536,673) |
| Cash transfers for capital projects | 641,514 | 786,000 | 1,427,514 |
| Net cash provided (used) by capital and related financing activities | ( 288,845) | ( 1,718,421) | ( 2,007,266) |
| **Cash flows from investing activities:** | | | |
| Interest received | 8,719 | 104,234 | 112,953 |
| Net cash provided (used) by investing activities | 8,719 | 104,234 | 112,953 |
| Net increase (decrease) in cash and cash equivalents | ( 269,896) | ( 301,877) | ( 571,773) |
| Cash and cash equivalents, July 1, (including $478,237 and $3,409,574 in restricted accounts) | 657,277 | 3,690,813 | 4,348,090 |
| Cash and cash equivalents, June 30, (including $322,241 and $3,296,778 in restricted accounts) | $ 387,381 | $ 3,388,936 | $ 3,776,317 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF CASH FLOWS- PROPRIETARY FUNDS
For the Fiscal Year Ended June 30, 2003

| | Business-type Activities - Enterprise Funds | | |
|---|---|---|---|
| | Civic Center | Parking System | Totals |
| **Reconciliation of operating income(loss) to net cash provided (used) by operating activities:** | | | |
| Operating income (loss) | $ ( 951,566) | $ 246,243 | $ ( 705,323) |
| Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities: | | | |
| Depreciation expense | 770,053 | 973,114 | 1,743,167 |
| Bad debt expense | - - | ( 285) | ( 285) |
| Decrease (increase) in accounts receivable | 306 | 25,337 | 25,643 |
| Decrease (increase) in restricted deposits | ( 41,784) | - - | ( 41,784) |
| Decrease (increase) in due from other funds | ( 32) | ( 142,133) | ( 142,165) |
| Decrease (increase) in prepaid expenses | ( 698) | 30 | ( 668) |
| Increase (decrease) in customer deposits | 24,148 | - - | 24,148 |
| Increase (decrease) in accounts payable | ( 141,823) | ( 24,714) | ( 166,537) |
| Increase (decrease) in due to other funds | ( 54,164) | 223,276 | 169,112 |
| Increase (decrease) in payroll payable | 8,283 | 4,952 | 13,235 |
| Increase (decrease) in other accrued expenses | 9,195 | 6,490 | 15,685 |
| Net cash provided by operations | $ ( 378,082) | $ 1,312,310 | $ 934,228 |
| **Noncash investing, capital, and financing activities:** | | | |
| Interest paid | $ 510,855 | $ 871,805 | $ 1,382,660 |
| Borrowing under capital leases | | $ 70,000 | $ 70,000 |
| Loss from replacement of capital asset | | $ 2,947 | $ 2,947 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF FIDUCIARY NET ASSETS
FIDUCIARY FUNDS
June 30, 2003

| | Pension Trust Funds | Agency Funds |
|---|---|---|
| **ASSETS** | | |
| Non-pooled cash | $ 4,497,756 | $ 674,051 |
| Total cash | 4,497,756 | 674,051 |
| Investments, at fair value: | | |
| Federal government securities | 4,377,032 | -- |
| Managed bond funds | 8,534,124 | -- |
| Managed stock funds | 2,790,104 | -- |
| Other investments | -- | 496,830 |
| Total investments | 15,701,260 | 496,830 |
| Receivables: | | |
| Interest receivable | 113,774 | -- |
| Mortgage loans receivable | 7,900 | -- |
| Total receivables | 121,674 | -- |
| Total assets | $ 20,320,690 | $ 1,170,881 |
| **LIABILITIES** | | |
| Accounts payable | 14,130 | 1,170,881 |
| Refunds payable | 335,081 | -- |
| Total liabilities | 349,211 | 1,170,881 |
| **NET ASSETS** | | |
| Net assets held in trust for pension benefits | $ 19,971,479 | $ -- |

(1) A schedule of funding progress for each plan is presented in the Required Supplementary Information section of this report.

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF CHANGES IN FIDUCIARY NET ASSETS
FIDUCIARY FUNDS
For the Fiscal Year Ended June 30, 2003

| | Fiduciary Fund Type Pension Trust Funds |
|---|---|
| **ADDITIONS** | |
| Contributions: | |
| Employer | $ 3,263,326 |
| Plan members | 998,193 |
| Insurance premium surtax | 2,152,179 |
| Total contributions | 6,413,698 |
| Investment income: | |
| Net increase(decrease) in fair value of investments | 459,225 |
| Interest and dividends | 750,113 |
| Less: investment expense | ( 61,512) |
| Net investment income | 1,147,826 |
| Total additions | 7,561,524 |
| **DEDUCTIONS** | |
| Benefits | 7,479,590 |
| Administrative expenses | 38,535 |
| Refunds of contributions | 55,916 |
| Total deductions | 7,574,041 |
| Change in net assets | ( 12,517) |
| Net assets held in trust for pension benefits: | |
| Beginning of year | 19,983,996 |
| End of year | $ 19,971,479 |

The notes to the financial statements are an integral part of this statement

## I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accounting policies of the Municipality of Charleston, West Virginia, conform to generally accepted accounting principles as applicable to governmental units. The following is a summary of significant accounting policies:

### A. Reporting Entity

The City of Charleston is a municipal corporation governed by an elected mayor and twenty-seven member council. The accompanying financial statements present the government and its component units as required by generally accepted accounting principles. Blended component units, although legally separate entities, are, in substance, part of the government's operations. The discretely presented component unit is reported in a separate column in the government-wide financial statements (see note below for description) to emphasize that it is legally separate from the government.

*Blended Component Unit*
The Charleston Building Commission serves the residents of the Municipality of Charleston, West Virginia, and is governed by a board comprised of five members appointed by council for a term of five years each.

*Discretely Presented Component Unit*

The Charleston Sanitary Board serves all citizens of the Municipality of Charleston and is governed by a three member board comprised of the Mayor and two members of council. The rates for user charges and bond issuance authorizations are approved by the government's elected council. The Sanitary Board is reported as an enterprise fund.

Complete financial statements for each of the individual component units can be obtained at the entity's administrative offices.

### B. Government-Wide and Fund Financial Statements

The government-wide financial statements (i.e., the statement of net assets and the statement of changes in net assets) report information on all of the nonfiduciary activities of the primary government and its component units. For the most part, the effect of interfund activity has been removed from these statements. Governmental activities, which normally are supported by taxes and intergovernmental revenues, are reported separately from business-type activities, which rely to a significant extent on fees and charges for support. Likewise, the primary government is reported separately from certain legally separate component units for which the primary government is financially accountable.

The statement of activities demonstrates the degree to which the direct expenses of a given function are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function. Program revenues include 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Separate financial statements are provided for governmental funds, proprietary funds, and fiduciary funds, even though the latter are excluded from the government-wide financial statements. Major individual governmental funds and major individual enterprise funds are reported as separate columns in the fund financial statements. Combining financial statements for the nonmajor governmental funds are included as supplementary information.

**C. Measurement focus, basis of accounting, and financial statement presentation**

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting, as are the proprietary fund and fiduciary fund financial statements. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year for which they are levied. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the government considers revenues to be available if they are collected within 60 days of the end of the current fiscal period. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures, as well as expenditures related to compensated absences and claims and judgments, are recorded only when payment is due.

Property taxes, franchise taxes, interest and special assessments are susceptible to accrual. Also, in accordance with Governmental Accounting Standards Board Statement No. 22 as amended by Governmental Accounting Standards Board Statement No. 33, certain taxpayer-assessed revenues such as business and occupation and utility taxes are also accrued as revenue at year end. Only the portion of special assessments receivable due within the current fiscal period is considered to be susceptible to accrual as revenue of the current period. Other receipts and taxes become measurable and available when cash is received by the government and are recognized as revenue at that time.

Entitlements and shared revenues are recorded at the time of receipt or earlier if the susceptible to accrual criteria are met. Expenditure-driven grants are recognized as revenue when the qualifying expenditures have been incurred and all other grant requirements have been met.

The government reports the following major governmental funds:

The *General fund* is the government's primary operating fund. It accounts for all financial sources of the general government, except those required to be accounted for in another fund.

The *Coal Severance Tax fund*, a special revenue fund, accounts for revenues and expenditures from a severance tax placed on coal that are distributed to West Virginia municipalities. The State Auditor's Office requires an annual budget be submitted for approval for this fund. A restriction on the fund is that no more than 25% of the revenues can be spent for personal services. A resolution was adopted by council dedicating all of this fund's receipts be utilized for the payment of debt service of the 1998 Civic Center Revenue Bonds.

The *HOME fund*, a special revenue fund, accounts for federal grants received from HUD for the purpose of providing loans to low to moderate income recipients to purchase homes.

The government reports the following major proprietary funds:

The *Civic Center fund* is a large multipurpose meeting, convention and entertainment facility. The Civic Center/Auditorium Board was created in 1953 to supervise, operate and maintain the Civic Center and the Municipal Auditorium. The board is appointed by the mayor with the approval of City Council. This fund accounts for the receipts and expenses of the operations of this facility.

The *Parking System fund* consists of parking buildings, parking lots and metered spaces. The City has delegated a special committee of the Council, designated as the Parking Facilities Committee composed of the mayor and members of the finance committee of council, to promulgate rules and regulations governing the usage of all the parking facilities. This fund accounts for all receipts and expenses of operating the parking system.

Additionally, the government reports the following fund types:

The *pension trust funds* account for the activities of the Public Safety Employees Retirement System, which accumulates resources for pension benefit payments to qualified public safety employees. These funds are accounted for in essentially the same manner as the proprietary funds, using the same measurement focus and basis of accounting.

The *agency funds* are custodial in nature (assets equal liabilities) and do not present results of operations or have a measurement focus. Agency funds are accounted for using the modified accrual basis of accounting. These funds are used to account for assets that the Municipality of Charleston, West Virginia holds for others in an agency capacity.

The Municipality of Charleston, West Virginia follows GASB guidance as applicable to proprietary funds and FASB Statements and Interpretations, Accounting Principles Board Opinions and Accounting Research Bulletins issued on or before November 30, 1989 that do not conflict with GASB Pronouncements in both the government-wide and proprietary fund financial statements.

As a general rule the effect of interfund activity has been eliminated from the government-wide financial statements.

Amounts reported as program revenues include 1) charges to customers or applicants for goods, services, or privileges provided, 2) operating grants and contributions, and 3) capital grants and contributions, including special assessments. Internally dedicated resources are reported as general revenues rather than program revenues. Likewise, general revenues include all taxes.

Proprietary funds distinguish operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from providing services in connection with a proprietary fund's principal ongoing operations. The principal operating revenue of the Civic Center and Parking System (enterprise funds) and the Sanitary Board( a discretely presented component unit) are charges to customers for services. Operating expenses for the enterprise funds include the cost of services, administrative expenses, and depreciation of capital assets. All revenues and expenses not meeting this definition are reported as nonoperating revenues and expenses.

## D. Assets, Liabilities, and Net Assets or Equity

### 1. Deposits and Investments

The Municipality of Charleston, West Virginia's cash and cash equivalents are considered to be cash on hand, demand deposits and short term investments with original maturities of less than three months from the date of acquisition. For purposes of the Statement of Cash Flows, restricted assets may be considered cash equivalents based on liquidity.

In accordance with GASB Statement No. 31, "Accounting and Financial Reporting for Certain Investments and for External Investment Pools", the Municipality reports its investments at fair value, except for non-participating investment contracts (certificates of deposit and repurchase agreements) which are reported at cost, which approximates fair value. All investment income, including changes in fair value of investments, are recognized as revenue in the operating statement. Fair value is determined by quoted market prices.

Short-term investments are reported at cost, which approximates fair value. Securities traded on a national or international exchange are valued at the last reported sales price at current exchange rates. Managed funds related to the retirement systems not listed on an established market are reported at estimated fair value as determined by the respective fund managers based on quoted sales prices of underlying securities. Cash deposits are reported at carrying amount which reasonably estimates fair value. The composition of investments and fair values are presented in Note IV.A.

State statutes authorize the government to invest in the State Investment Pool or the Municipal Bond Commission or to invest such funds in the following classes of securities: Obligations of the United States or any agency thereof, certificates of deposit (which mature in less than one year), general and direct obligations of the state of West Virginia; obligations of the federal mortgage association; indebtedness secured by first lien deed of trusts for property situated within this state if the payment is substantially insured or guaranteed by the federal government; pooled mortgage trusts (subject to limitations); indebtedness of any private corporation that is properly graded as in the top two or three highest rating grades; interest earning deposits which are fully insured or collateralized; and mutual funds registered with S.E.C. which have fund assets over three hundred million dollars.

State statute limitations concerning the aforementioned investments include the following: at no time can investment portfolios consist of more than seventy-five percent of the indebtedness of any private corporation nor can the portfolio have over twenty-five percent of its portfolio consisting of the indebtedness of a private corporation's debt which matures in less than one year; at no time may more than nine percent of the portfolio be invested in securities issued by a single private corporation or association; and at no time can more than sixty percent of the portfolio be invested in equity mutual funds.

Municipal Pension Funds are governed as to type of investments by *West Virginia Code 8-22-22.* Pension funds are permitted to invest in all of the above mentioned types of investments with the exceptions of (1) Direct and general obligations of the state and (2) Pooled mortgage trusts. Additionally, pension funds are permitted to invest funds in the following categories of investments: (1) Repurchase agreements and (2) Common stock, securities convertible into common stocks, or warrants and rights to purchase such securities. Pension funds have different rules concerning the purchase of marketable debt securities.

The following restrictions apply only to pension portfolios and are separate and distinct from the limitations mentioned above: (1) fixed income securities which are issued by one issuer (with the exception of the United States government) are not to exceed ten percent of the total assets of the total pension fund assets; and (2) at no time can the equity portion of the portfolio exceed fifty percent of the total portfolio.

**2. Receivables and Payables**

*Interfund Transactions*

Activity between funds that are representative of lending/borrowing arrangements outstanding at the end of the fiscal year are referred to as either "interfund receivables or payables" (i.e., the current portion of interfund loans) or "advances to/from other funds" (i.e., the non-current portion of interfund loans). All other outstanding balances between funds are reported as "due to/from other funds." Any residual balance outstanding between the governmental activities and the business-type activities are reported in the government-wide financial statements as "internal balances".

*Trade Receivables*

All trade receivables are shown at their gross value and, where appropriate, are reduced by the estimated portion that is expected to be uncollectible.

*Property Tax Receivable*

The property tax receivable is equal to ten percent of the property taxes outstanding at June 30, 2003.

All current taxes assessed on real and personal property may be paid in two installments; the first installment is payable on September first of the year for which the assessment is made, and becomes delinquent on October first; the second installment is payable on the first day the following March and becomes delinquent on April first. Taxes paid on or before the date when they are payable, including both first and second installments, are subject to a discount of two and one-half percent. If the taxes are not paid on or before the date in which they become delinquent, including both first and second installments, interest at the rate of nine percent per annum is added from the date they become delinquent until the date they are paid.

All municipalities within the state are authorized to levy taxes not in excess of the following maximum levies per $100 of assessed valuation: On Class I property, twelve and five-tenths cents (12.5 cents); On Class II property, twenty-five cents (25 cents); On Class IV property, fifty cents (50 cents). In addition, municipalities may provide for an election to lay an excess levy; the rates not to exceed statutory limitations, provided at least sixty percent of the voters cast ballots in favor of the excess levy.

The rates levied by the municipality per $100 of assessed valuation for each class of property for the fiscal year ended June 30, 2003, were as follows:

| Class of Property | Assessed Valuation For Tax Purposes | Current Expense | Excess Levy | Bond Purposes |
|---|---|---|---|---|
| Class I | $ 25,278,182 | 5.75 cents | 5.03 cents | 3.18 cents |
| Class II | $ 987,596,820 | 11.50 cents | 10.06 cents | 6.36 cents |
| Class IV | $ 1,467,028,420 | 23.00cents | 20.12 cents | 12.72 cents |

The Municipality of Charleston, West Virginia held a special election on December 4, 1999. The municipality was authorized to lay an excess levy to provide approximately $3,421,215 annually during the next three fiscal years ended June 30, 2001 through June 30, 2003, for the purpose of current governmental expenses.

### 3. Inventories and Prepaid Items

There are no material inventories maintained; therefore they do not appear on the financial statements. Certain payments to vendors reflect costs applicable to future accounting periods and are recorded as prepaid items.

### 4. Restricted Assets

Certain proceeds of the Civic Center and Parking System enterprise funds and the Sanitary Board, a discretely presented component unit, revenue bonds, as well as certain proceeds set aside for their repayment, are classified as restricted assets on the statement of net assets because their use is limited by applicable bond covenants.

The *restricted cash* and cash equivalents for governmental activities reports resources set aside for governmental activities of $1,028,153 for contingency purposes for the City of Charleston Landfill. The land is owned by the City, however, the operations are contracted by Waste Management, a subsidiary of USA Waste Management. These resources are held as required by the contract agreement between the parties for landfill closure and post closure cost in the event the contractor should default on the contract. The *restricted cash* is also comprised of $113,898 held for general obligation bond debt service.

The *regular account* is used to report resources accumulated for debt service payments over the next twelve months related to business type activities.

The *reserve for construction* is used to report those proceeds of revenue bonds that are restricted for use in construction.

The *renewal and replacement* is used to report resources set aside in accordance with bond covenants to meet unexpected contingencies or fund asset renewals and replacements.

## 5. Capital Assets and Depreciation

Capital assets, which include property, plant, equipment, and infrastructure assets (e.g., roads, bridges, sidewalks, and similar items), are reported in the applicable governmental or business-type activities columns in the government-wide financial statements. Capital assets are defined by the government as assets with an initial, individual cost of $5,000 or more and estimated to have a useful life in excess of one year. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed. Donated capital assets are recorded at estimated fair market value at the date of donation.

The costs of normal maintenance and repairs that do not add to the value of the assets or materially extend assets lives are not capitalized.

Major outlays for capital assets and improvements are capitalized in proprietary funds as projects are constructed. Interest incurred during the construction phase of proprietary fund capital assets is reflected in the capitalized value of the asset constructed, net of interest earned on the invested proceeds during the same period.

Property, plant, and equipment of the primary government, as well as the Sanitary Board component unit, is depreciated using the straight line method over the following estimated useful lives:

| Assets | Years |
|---|---|
| Buildings | 40 |
| System Infrastructure | 40-50 |
| Transmission and Distribution Equipment | 05-10 |
| Vehicles | 03-05 |
| Office and Computer Equipment | 05 |

## 6. Compensated Absences

It is the government's policy to permit employees to accumulate earned but unused vacation and sick pay benefits. All vacation pay is accrued when incurred in the government-wide, proprietary, and fiduciary fund financial statements in accordance with GASB Statement No. 16, Accounting for Compensated Absences.

When a permanent full time employee retires, the employee may elect to have any accrued sick leave converted to insurance benefits based on the formula of two days sick leave for one month single coverage insurance premium or three days sick leave for one month family coverage insurance premium. A liability has been accrued for all employees who have actually retired at June 30, 2003, converted accrued sick leave to insurance premiums, and the actual costs to the City has been calculated.

## 7. Long-Term Obligations

In the government-wide financial statements, and proprietary fund types in the fund financial statements, long-term debt and other long-term obligations are reported as liabilities in the applicable governmental activities, business-type activities, or proprietary fund type statement of net assets. Bond premiums and discounts, as well as issuance costs, are deferred and amortized over the life of the bonds using the effective interest method. Bonds payable are reported net of the applicable bond premium or discount. Bond issuance costs are reported as deferred charges and amortized over the term of the related debt.

In the fund financial statements, governmental fund types recognize bond premiums and discounts, as well as bond issuance costs, during the current period. The face amount of debt issued is reported as other financing sources. Premiums received on debt issuances are reported as other financing sources while discounts on debt issuances are reported as other financing uses. Issuance costs, whether or not withheld from the actual debt proceeds received, are reported as debt service expenditures.

### 8. Fund Equity

In the fund financial statements, governmental funds report reservations of fund balance for amounts that are not available for appropriation or are legally restricted by outside parties for use for a specific purpose. Designations of fund balance represent tentative management plans that are subject to change.

Contributed capital is not subject to repayment and primarily represents assets contributed to Proprietary Funds by other city funds and donations. It also includes grants that are restricted for Proprietary Fund capital acquisitions, and assets acquired through general government resources. These assets are recorded at fair value on the date contributed.

GASB 34 eliminates the use of contributed capital and reclassifies the contributed capital to retained earnings as of the effective date of the reporting model. All contributed capital received after the effective date is recorded as revenues.

## II. RECONCILIATION OF GOVERNMENT-WIDE AND FUND FINANCIAL STATEMENTS

### A. Explanation of Certain Differences Between the Governmental Fund Balance Sheet and the Government-wide Statement of Net Assets

The governmental fund balance sheet includes a reconciliation between fund balance total governmental funds and net assets-governmental activities as reported in the government-wide statement of net assets. One element of that reconciliation explains that "long-term liabilities, including bonds payable, are not due and payable in the current period and therefore are not reported in the funds." The details of this $43,349,766 difference are as follows:

| | | |
|---|---|---|
| Bonds payable: | $ | 13,049,694 |
| Less: issuance cost (to be amortized as interest expense) | | (26,421) |
| Accrued interest payable | | 944,313 |
| Capital leases payable | | 3,483,972 |
| Claims and judgments | | 3,401,529 |
| Compensated absences | | 1,437,259 |
| Net pension obligation | | 21,059,420 |
| Net adjustment to decrease fund balance-total governmental funds to arrive at net assets-governmental activities | $ | 43,349,766 |

## B. Explanation of Certain Differences Between the Governmental Fund Statement of Revenues, Expenditures, and Changes in Fund Balance and the Government-wide Statement of Activities

The governmental fund statement of revenues, expenditures, and changes in fund balances includes a reconciliation between net changes in fund balances-total governmental funds and changes in net assets of governmental activities as reported in the government-wide statement of activities. One element of that reconciliation explains that "Governmental funds report capital outlays as expenditures. However, in the Statement of Activities the cost of those assets are allocated over their estimated useful lives and reported as depreciation expense. This is the amount that capital outlays exceeded depreciation for the current period". The details of the $4,180,135 difference are as follows:

| | |
|---|---|
| Capital outlays | $ 10,497,889 |
| Depreciation expense | (6,317,754) |
| Net adjustment to increase net change in fund balance-total governmental funds to arrive at changes in net assets of governmental activities | $ 4,180,135 |

Another element of that reconciliation states that "The net effect of various miscellaneous transactions involving capital assets (i.e. sales, trade-ins, and donations) is to increase net assets". The details of this $13,937 difference are as follows:

| | |
|---|---|
| Donations of capital assets increase net assets in the statement of activities, but do not appear in the governmental funds because they are not financial resources | $ 14,800 |
| In the statement of activities, only the gain on the sale of capital assets is reported. However, in the governmental funds, the proceeds from the sale increase financial resources. Thus, the change in net assets differs from the change in fund balance by the cost of the capital asset sold. | (863) |
| Net adjustment to increase net change in fund balance-total governmental funds to arrive at changes in net assets of governmental activities | $ 13,937 |

Another element of that reconciliation states that "The issuance of long-term debt (i.e. bonds, leases) provide current financial resources to governmental funds, while the repayment of the principal of long-term debt consumes the current financial resources of governmental funds. Neither transaction, however, has any effect on net assets. Also, governmental funds report the effect of issuance costs, premiums, discounts and similar items when debt is first issued, whereas, these amounts are deferred and amortized in the statement of activities". The details of this $637,474 difference are as follows:

| | | |
|---|---|---|
| Debt issued or incurred: | | |
| Capital lease financing | $ | (1,000,000) |
| Additional accrued interest expense | | (24,931) |
| Principal repayments: | | |
| General obligation and revenue bonds | | 1,740,766 |
| Additional accrued interest expense | | (78,362) |
| Net adjustment to increase net changes in fund balances-total governmental funds to arrive at changes in net assets of governmental activities | $ | 637,473 |

Another element of that reconciliation states that "Some expenses reported in the statement of activities do not require the use of current financial resources and, therefore, are not reported as expenditures in governmental funds". The details of this $5,661,010 difference are as follows:

| | | |
|---|---|---|
| Compensated absences | $ | 657,213 |
| Claims and judgments | | 748,175 |
| Net pension obligation | | 4,255,623 |
| Net adjustment to decrease net changes in fund balances-total governmental funds to arrive at changes in net assets of governmental activities | $ | 5,661,011 |

## III. STEWARDSHIP, COMPLIANCE AND ACCOUNTABILITY

### A. Budgetary Information

Annual budgets are adopted on a basis consistent with generally accepted accounting principles for the General Fund and the Coal Severance Tax Special Revenue Fund, except that business and occupation taxes are not reported on the modified accrual basis for budgetary purposes. All annual appropriations lapse at fiscal year end.

The governing body of the municipality is required to hold a meeting or meetings between the seventh and twenty-eighth days of March to ascertain the financial condition of the Municipality and to prepare the levy estimate (budget) for the fiscal year commencing July 1. The budget is then forthwith submitted to the State Auditor for approval. The governing body then reconvenes on the third Tuesday in April to hear objections from the public and formally lay the levy.

The appropriated budget is prepared by fund, function and department. Transfers of appropriations between departments and revenue related revisions to the budget require approval from the governing council and then submission to the State Auditor for approval. Revisions become effective when approved by the State Auditor and budgeted amounts in the financial statements reflect only such approved amounts. The governing body made the following material supplementary budgetary appropriations throughout the year.

| Amount | Description |
|---|---|
| $ 2,333,380 | General Government Expenditure Increase |
| 634,519 | Public Safety Expenditure Increase |
| 406,222 | Streets and Transportation Expenditure Increase |
| 348,244 | Culture and Recreation Expenditure Increase |

Encumbrance accounting is not employed as an extension of the formal budgetary process. Encumbrances (e.g. purchase orders, contracts) should be reported as reservations of fund balance and do not constitute expenditures or liabilities because the commitments will be reappropriated and honored during the subsequent year.

A reconciliation from the budgetary basis to the GAAP Modified Accrual Fund Basis is due to the recording of business and occupation tax revenues on the cash basis for budgetary purposes and the accrual basis for GAAP purposes and is as follows:

| | Net Change in Fund Balance | Fund Balance |
|---|---|---|
| Budgetary Basis | $ 383,975 | $ 3,743,238 |
| Basis of Accounting Difference | 81,297 | 8,812,763 |
| GAAP Basis | $ 465,272 | $ 11,556,001 |

### B. Deficit Fund Equity

The Home Special Revenue and Department of Transportation Grants Special Revenue Funds had a deficit fund balance of $938 and $23,339, respectively, as of June 30, 2003. The HOME Fund is a HUD grant fund that loans monies to low to moderate income applicants for the purchase of homes. These deferred revenues are subject to write-off of amounts due, resulting in a deficit fund balance. The Department of Transportation Fund received and deposited grant funds that belonged to another City fund in error, thus resulting in an over expenditure when the error was discovered and the correct fund was reimbursed.

## IV. DETAILED NOTES ON ALL FUNDS

### A. Deposits and Investments

At year end, the government's carrying amount of deposits was $37,785,939 and the bank balances were $38,950,613. Of the bank balance, $200,000 was covered by federal depository insurance or by collateral held by the government's agent in the government's name (Category 1). Of the remaining balance, $38,750,613 was collateralized with securities held by the pledging financial institution's trust department or agent in the government's name (Category 1).

The bank balance for the Sanitary Board, a discretely presented component unit, was $3,368,215. Of the bank balance, $100,000 was covered by federal depository insurance for each depository.

Investments are categorized into these three categories of credit risk:

(1) Insured or registered, or securities held by the government or its agent in the government's name.
(2) Uninsured and unregistered, with securities held by the counterparty's trust department or agent in the government's name.
(3) Uninsured and unregistered, with securities held by the counterparty, or by its trust department or agent, but not in the government's name.

At year end the government's investment balances were as follows:

| | Category 1 | Category 3 | Carrying Amount | Fair Value |
|---|---|---|---|---|
| U.S. Government Securities | $ 4,377,033 | $ - | $ 4,377,033 | $ 4,377,033 |
| Commercial Paper | 2,520,541 | - | 2,520,541 | 2,520,541 |
| Corporate Bonds | 4,828,635 | - | 4,828,635 | 4,828,635 |
| Common Stock | - | 6,742,062 | 6,742,062 | 6,742,062 |
| Total | $ 11,726,209 | $ 6.742,062 | $ 18,468,271 | $ 18,468,271 |
| Investments not subject to categorization: | | | | |
| Municipal Bond Commission | | | 2,415,787.00 | 2,415,787.00 |
| Total Investments | | | $ 20,884,058 | $ 20,884,058 |

At year end, the Sanitary Board investment balances were as follows:

| | Category 1 | Carrying Amount | Fair Value |
|---|---|---|---|
| Commercial Paper | $ 527,247 | $ 527,247 | $ 527,247 |
| Total | $ 527,247 | $ 527,247 | $ 527,247 |
| Investments not subject to categorization: | | | |
| Municipal Bond Commission | | 2,404,800 | 2,404,800 |
| Total Investments | | $ 2,932,047 | $ 2,932,047 |

A reconciliation of cash and investments as shown on the Statement of Net Assets of the primary government is as follows:

| | |
|---|---|
| Carrying amount of cash and deposits | $ 16,937,882 |
| Carrying amount of investments | 20,884,058 |
| Total | $ 37,821,940 |
| | |
| Cash and cash equivalents | $ 16,937,882 |
| Cash and cash equivalents-restricted | 31,638 |
| Investments | 17,279,206 |
| Investments-restricted | 3,573,214 |
| Total | $ 37,821,940 |

A reconciliation of cash and investments as shown on the Balance Sheet of the Sanitary Board is as follows:

| | Sanitary Board |
|---|---|
| Carrying amount of cash and deposits | $ 2,340,377 |
| Carrying amount of investments | 2,932,047 |
| Total | $ 5,272,424 |
| | |
| Cash and cash equivalents | $ 2,340,377 |
| Investments-restricted | 2,932,047 |
| Total | $ 5,272,424 |

## B. Receivables

Receivables at year end for the government's individual major funds and nonmajor, and fiduciary funds in the aggregate, including applicable allowances for uncollectible accounts, are as follows:

| | General | HOME | Parking System | Nonmajor and Other Funds | Total |
|---|---|---|---|---|---|
| Receivables: | | | | | |
| Interest | $ - | $ - | $ - | $ 12,415 | $ 12,415 |
| Accounts | 9,412,009 | - | 116,018 | 432,751 | 9,960,778 |
| Loans | - | 2,466,881 | - | 1,799,783 | 4,266,664 |
| Grants | - | | - | 98,725 | 98,725 |
| Taxes | - | - | - | 91,897 | 91,897 |
| Intergovernmental | 16,808 | - | - | - | 16,808 |
| Gross Receivables | $ 9,428,817 | $ 2,466,881 | $ 116,018 | $ 2,435,571 | $ 14,447,287 |
| Less: Allowance for Uncollectables | (498,983) | - | (21,500) | - | (520,483) |
| Net Total Receivables | $ 8,929,834 | $ 2,466,881 | $ 94,518 | $ 2,435,571 | $ 13,926,804 |

Accounts Receivable for the Charleston Sanitary Board are $1,083,209 net of allowance for uncollectables of $116,000.

## C. Capital Assets

Capital Asset activity for the fiscal year ended June 30, 2003 was as follows:

| | Primary Government | | | |
|---|---|---|---|---|
| | Beginning Balance | Increases | Decreases | Ending Balance |
| **Governmental activities:** | | | | |
| Capital assets, not being depreciated: | | | | |
| Land | $ 2,733,373 | $ 170,254 | $ - | $ 2,903,627 |
| Construction in progress | 501,659 | 5,040,068 | (453,445) | 5,088,282 |
| Total capital assets not being depreciated | 3,235,032 | 5,210,322 | (453,445) | 7,991,909 |
| Capital assets being depreciated: | | | | |
| Buildings and improvements | 19,838,866 | 226,629 | - | 20,065,495 |
| Structures and improvements | 9,548,418 | 645,468 | - | 10,193,886 |
| Machinery and equipment | 8,815,656 | 1,366,619 | (321,964) | 9,860,311 |
| Vehicles | 12,662,698 | 1,170,937 | (1,031,231) | 12,802,404 |
| Furniture | 155,307 | 2,874 | - | 158,181 |
| Infrastructure | 58,647,495 | 1,843,802 | - | 60,491,297 |
| Total accumulated depreciation | (53,815,340) | (6,317,754) | 1,313,189 | (58,819,905) |
| Total capital assets being depreciated, net | 55,853,100 | (1,061,425) | (40,006) | 54,751,669 |
| Governmental activities capital assets, net | $ 59,088,132 | $ 4,148,897 | $ (493,451) | $ 62,743,578 |

The June 30, 2002 ending balance in accumulated depreciation was restated to accurately reflect the useful lives of the assets. The decreases in the construction in progress is equally reflected as an addition to the capital assets.

| | Beginning Balance | Increases | Decreases | Ending Balance |
|---|---|---|---|---|
| **Business-type activities:** | | | | |
| Capital assets, not being depreciated: | | | | |
| Land | $ 2,866,447 | $ - | $ - | $ 2,866,447 |
| Construction in progress | 1,789,854 | 815,633 | (1,760,567) | 844,920 |
| Total capital assets, not being depreciated | 4,656,301 | 815,633 | (1,760,567) | 3,711,367 |
| Capital assets being depreciated: | | | | |
| Buildings and improvements | 51,139,739 | 9,181,931 | - | 60,321,670 |
| Machinery, equipment and vehicles | 1,345,819 | 156,483 | (102,487) | 1,399,815 |
| Improvements other than buildings | 239,489 | - | - | 239,489 |
| Less: accumulated depreciation | (33,905,730) | (1,743,166) | 49,540 | (35,599,356) |
| Total capital assets being depreciated, net | 18,819,317 | 7,595,248 | (52,947) | 26,361,618 |
| Business-type activities capital assets, net | $ 23,475,618 | $ 8,410,881 | $ (1,813,514) | $ 30,072,985 |

Depreciation expense was charged to functions/programs of the primary government as follows:

| | | |
|---|---|---|
| Governmental activities: | | |
| General government | $ | 3,237,402 |
| Public safety | | 1,798,201 |
| Highways and streets, including depreciation of general infrastructure assets | | 398,498 |
| Health and sanitation | | 281,128 |
| Culture and recreation | | 562,085 |
| Social services | | 40,439 |
| Total depreciation expense-governmental activities | $ | 6,317,753 |
| Business-type activities: | | |
| Civic Center | $ | 770,053 |
| Parking System | | 973,114 |
| Total depreciation expense-business-type activities | $ | 1,743,167 |

*Construction in Progress*

The government has active construction projects as of June 30, 2003. The projects include street repairs, lighting for streets, recreation facilities and a new fire station. At year end the amounts for governmental activities spent-to-date are as follows:

| | Spent-to-Date | Funded |
|---|---|---|
| Kennewha & Burlew Streets | $ 2,800 | General Fund & CDBG Grants |
| Louden Heights | 5,700 | General Fund |
| Bridge Road Retaining Wall | 1,120,103 | General Fund & State DOH Grant |
| Edgewood Slip Repairs | 140,222 | General Fund |
| Stone Road | 53,780 | General Fund |
| Scraggs Drive | 55,588 | CDBG Grants |
| Tennis Club Sidewalk Extension | 53,080 | General Fund |
| Kanawha City Multipurpose Room | 273,744 | General Fund & Private Contributions |
| Kanawha Blvd. Lighting Project | 1,198,590 | DOT Grants |
| Elkriver Project | 219,533 | DOT Grants |
| Municipal Auditorium Renovations | 51,571 | Municipal Aud. Capital Improvement Fund |
| Baseball Park | 746,718 | Bond Issuance, State Grants, Contributions |
| Orchard Manor Fire Station | 1,166,853 | Bond Issuance |
| | $ 5,088,282 | |

For business-type activities, the government has an active construction project to renovate the City's parking garages. At year end total spent-to-date was $844,921. This project is funded by the Parking System and the General Fund.

**Discretely Presented Component Unit**

Activity related to capital assets for the Sanitary Board for the fiscal year ended June 30, 2003 was as follows:

| | Beginning Balances | Increases | Decreases | Ending Balance |
|---|---|---|---|---|
| Capital Assets, not being depreciated: | | | | |
| Land | $ 755,247 | $ 740 | $ - | $ 755,987 |
| Construction in progress | 842,810 | 1,920,616 | (84,418) | 2,679,008 |
| Sewer system, July 1, 1952 | 1 | - | - | 1 |
| Total capital assets not being depreciated | $ 1,598,058 | $ 1,921,356 | $ (84,418) | $ 3,434,996 |
| Capital assets, being depreciated: | | | | |
| Structures and improvements | $ 8,238,437 | $ 32,151 | $ - | $ 8,270,588 |
| Collection system | 46,449,458 | 487,567 | - | 46,937,025 |
| Pumping system | 2,492,514 | 2,650 | - | 2,495,164 |
| Treatment and disposal system | 17,070,223 | 27,673 | - | 17,097,896 |
| General plant equipment | 3,905,865 | 91,000 | (64,407) | 3,932,458 |
| Less: accumulated depreciation | (30,871,617) | (2,078,735) | 62,955 | (32,887,397) |
| Total capital assets being depreciated | $ 47,284,880 | $ (1,437,694) | $ (1,452) | $ 45,845,734 |
| Total capital assets, net | $ 48,882,938 | $ 483,662 | $ (85,870) | $ 49,280,730 |

### D. Interfund Receivables, Payables, and Transfers

The composition of interfund balances as of June 30, 2003, is as follows:

Due to/from other funds

| Receivable Fund | Payable Fund | Amount |
|---|---|---|
| General | Civic Center | $ 173,069 |
| | Parking System | 441,661 |
| | HOME | 7,243 |
| | Nonmajor Governmental Funds | 105,290 |
| Civic Center | General Fund | 141 |
| Parking System | General Fund | 393,643 |
| | Nonmajor Governmental Fund | 833 |
| Nonmajor Governmental Funds | Nonmajor Governmental Fund | 49,121 |
| Total | | $ 1,171,001 |

Due to/from primary government and component units:

| Receivable Fund | Payable Fund | Amount |
|---|---|---|
| General Fund | Component Unit-Sanitary Board | $ 500 |

Interfund Transfers:

| | Transfers In | | | | | |
|---|---|---|---|---|---|---|
| | General Fund | Nonmajor Governmental | Civic Center Enterprise | Parking System Enterprise | Agency Fund | Total Transfers In |
| Transfers out: | | | | | | |
| General fund | $ 3,154,722 | $ - | $ 1,023,948 | $ 786,000 | $ - | $ 4,964,670 |
| Coal Severance | - | - | 88,118 | - | - | 88,118 |
| Nonmajor governmental funds | - | 3,558,025 | 9,008 | - | 31,365 | 3,598,398 |
| Civic Center Enterprise | - | 96,501 | - | - | - | 96,501 |
| Total Transfers Out | $ 3,154,722 | $ 3,654,526 | $ 1,121,074 | $ 786,000 | $ 31,365 | $ 8,747,687 |

## E. Leases

*Capital Leases*

The government has entered into lease agreements as lessee for financing the acquisition of recreation, public works and public safety equipment. These lease agreements qualify as capital leases for accounting purposes, and, therefore have been recorded at the present value of the future minimum lease payments as of the inception date.

The government has entered into lease agreements as lessee for financing the acquisition of machinery and equipment for its Civic Center and Parking System Funds. These lease agreements qualify as capital assets for accounting purposes, and, therefore have been recorded at the present value of future minimum lease payments as of the inception date in the Civic Center and Parking System enterprise funds.

The assets acquired through capital leases are as follows:

| Asset | Governmental Activities | Civic Center | Parking System |
|---|---|---|---|
| Machinery, equipment and vehicles | $ 3,469,017 | $ 28,677 | $ 228,252 |
| Less: accumulated depreciation | (905,507) | (12,356) | (162,715) |
| Total | $ 2,563,510 | $ 16,321 | $ 65,537 |

Assets acquired through capital leases for governmental activities were estimated since the history of these lease assets could not be converted upon implementation of new accounting software on July 1, 2002. The accumulated depreciation for these assets was also estimated. All new lease purchases during the fiscal year ended June 30, 2003 are stated at actual costs and actual depreciation.

The future minimum lease obligations and the net present value of these minimum lease payments as of June 30, 2003, were as follows:

| Year Ending June 30 | Governmental Activities | Civic Center | Parking System |
|---|---|---|---|
| 2004 | $ 1,597,855 | $ 6,743 | $ 31,663 |
| 2005 | 1,238,520 | 6,743 | 26,737 |
| 2006 | 590,523 | 3,048 | 12,995 |
| 2007 | 233,501 | - | - |
| 2008 | 67,047 | - | - |
| Total minimum lease payments | $ 3,727,446 | $ 16,534 | $ 71,395 |
| Less: amount representing interest | (243,475) | (1,287) | (2,888) |
| Present value of minimum lease payments | $ 3,483,971 | $ 15,247 | $ 68,507 |

The Sanitary Board, a discretely presented component unit entered into a Lease-Purchase Agreement dated December 27, 2000 with Banc One Leasing Corporation of Columbus, Ohio. The economic substance of the lease is that The Sanitary Board is financing the acquisition of equipment/vehicles for its maintenance crews through the lease and, accordingly, it is recorded in the Board's assets and liabilities.

The assets acquired through capital lease are as follows:

| | |
|---|---|
| General plant equipment | $ 1,269,549 |
| Less: accumulated depreciation | (534,134) |
| Total | $ 735,415 |

The lease agreement is secured by the leased assets. The lease agreement contains a purchase option under which the Board may purchase all of the equipment covered by the lease on any rent payment due date (bi-annual; June 27 and December 27) by paying Banc One Leasing Corporation all rent payments then due plus the termination value at such date.

The future minimum lease obligation and the net present value of these minimum lease payments as of June 30, 2003, were as follows:

| Year Ending June 30 | |
|---|---|
| 2004 | $ 240,296 |
| Total minimum lease payments | $ 240,296 |
| Less: amount representing interest | (6,306) |
| Present value of minimum lease payments | $ 233,990 |

## F. Long-Term Debt

*General Obligation Bonds*

The government issues general obligation bonds to provide for the acquisition and construction of major capital facilities. General Obligation Bonds currently outstanding are as follows:

**Governmental Activities**

| Purpose | Maturity Date | Interest Rates | Issued | Retired | Balance June 30, 2003 |
|---|---|---|---|---|---|
| Public Improvement Bonds | | | | | |
| Series 1989 | 2009 | 7.1 to 7.2% | $ 15,000,000 | $ 7,205,000 | $ 7,795,000 |
| Total | | | $ 15,000,000 | $ 7,205,000 | $ 7,795,000 |

Annual debt service requirements to maturity for general obligation bonds are as follows:

| Year Ending June 30 | Governmental Activities Principal | Interest |
|---|---|---|
| 2004 | $ 885,000 | $ 529,380 |
| 2005 | 955,000 | 463,140 |
| 2006 | 1,025,000 | 391,860 |
| 2007 | 1,100,000 | 315,360 |
| 2008 | 1,185,000 | 233,100 |
| 2009-2010 | 2,645,000 | 193,860 |
| Total | $ 7,795,000 | $ 2,126,700 |

*Revenue Bonds*

The municipality issues bonds where the government pledges income derived from acquired or constructed assets to pay debt service. On December 6, 2002, the Commission issued $1,300,000 of Charleston Building Commission (West Virginia), Facilities Revenue Bonds, Series 2002 B (City of Charleston Fire Station) bearing interest at 3.81%. The proceeds of these bonds are being used to construct and equip a new fire station on certain real property within or adjoining the Orchard Manor housing complex. The bonds are secured by the fire station and an irrevocable pledge of lease payments, which are required to be in sufficient amount to pay principal and interest on the bonds when due. Upon expiration of the lease term, title to the fire station will pass to the City. Accordingly, the fire station is recorded as an asset of the City, and the related obligation for repayment for the bonds is recorded as a liability. Revenue Bonds outstanding, net of unamortized issuance costs of $888,318, at year end are as follows:

| Purpose | Maturity Dates | Interest Rates | Issued | Retired | Balance June 30, 2003 |
|---|---|---|---|---|---|
| Governmental activities: | | | | | |
| Center for Arts and Sciences | | | | | |
| Series 1999 | 2024 | 5.30-5.95% | $ 2,895,000 | $ 240,000 | $ 2,655,000 |
| Public Safety Center | | | | | |
| Series 1999 | 2024 | 5.00-5.70% | 1,500,000 | 120,000 | 1,380,000 |
| Fire Station | | | | | |
| Series 2002B | 2013 | 3.81% | 1,193,274 | - | 1,193,274 |
| | | | $ 5,588,274 | $ 360,000 | $ 5,228,274 |

| Purpose | Maturity Dates | Interest Rates | Issued | Retired | Balance June 30, 2003 |
|---|---|---|---|---|---|
| Business-type activities: | | | | | |
| Parking System Refunding Series 1993 | 2013 | Variable | $ 5,235,000 | $ 2,534,910 | $ 2,784,476 |
| Parking System Revenue Series 1994A | 2016 | Variable | 4,545,000 | 700,000 | 3,845,000 |
| Parking System Subordinate Revenue Series 1994E | 2016 | Variable | 5,455,000 | 1,205,000 | 4,250,000 |
| Parking System Subordinate Revenue Series 1995A | 2016 | Variable | 1,620,000 | 360,000 | 1,260,000 |
| Civic Center Improvement Bond Series 1998 | 2023 | 4.6 to 5.1% | 3,635,000 | 450,789 | 3,189,611 |
| Civic Center Improvement Bond Series 1999 | 2024 | 4.51 to 6.71% | 4,060,000 | 399,365 | 3,669,274 |
| Civic Center Lease Revenue Bonds Series 1999 | 2024 | 5.2 to 6.7% | 1,610,000 | 199,921 | 1,414,743 |
| Total business-type activities | | | $ 26,160,000 | $ 5,849,985 | $ 20,413,104 |
| Total revenue bonds | | | $ 31,748,274 | $ 6,209,985 | $ 25,641,378 |
| Component Unit: | | | | | |
| Sanitary Board Service Revenue Bonds | 2014-2030 | Variable | $ 20,938,760 | n/a | $ 20,938,760 |
| Total component unit | | | $ 20,938,760 | n/a | $ 20,938,760 |

Revenue bond debt service requirements to maturity are as follows:

| Year Ended | Governmental Activities | | Business-Type Activities | |
|---|---|---|---|---|
| | Principal | Interest | Principal | Interest |
| 2004 | $ 219,052 | $ 275,489 | $ 875,000 | $ 1,334,509 |
| 2005 | 228,247 | 265,585 | 925,000 | 1,285,646 |
| 2006 | 237,603 | 255,254 | 980,000 | 1,231,504 |
| 2007 | 247,126 | 244,489 | 740,000 | 1,026,283 |
| 2008 | 256,823 | 233,303 | 785,000 | 980,600 |
| 2009-2013 | 1,481,149 | 975,733 | 7,175,000 | 4,714,043 |
| 2014-2018 | 1,015,000 | 664,483 | 5,960,000 | 2,077,525 |
| 2019-2023 | 1,335,000 | 335,903 | 2,745,000 | 808,320 |
| 2024-2026 | 315,000 | 18,480 | 1,090,000 | 69,948 |
| Totals | $ 5,335,000 | $ 3,268,719 | $ 21,275,000 | $ 13,528,378 |

The Sanitary Board's (component unit) revenue bond debt service requirements to maturity are as follows:

| Year Ended | Principal | Interest |
|---|---|---|
| 2004 | $ 1,058,564 | $ 775,709 |
| 2005 | 1,103,568 | 732,161 |
| 2006 | 1,129,131 | 706,801 |
| 2007 | 1,155,273 | 678,782 |
| 2008 | 1,192,036 | 646,719 |
| 2009-2013 | 6,265,979 | 2,684,427 |
| 2014-2018 | 5,575,609 | 1,698,349 |
| 2019-2023 | 1,532,901 | 1,006,257 |
| 2024-2028 | 1,347,447 | 553,262 |
| 2029-2030 | 578,252 | 70,019 |
| Totals | $ 20,938,760 | $ 9,552,486 |

## Changes in General Long-Term Liabilities

| | Governmental Activities | | | | |
|---|---|---|---|---|---|
| | Beginning Balance | Additions | Reductions | Ending Balance | Due Within One Year |
| General obligation bonds payable | $ 9,435,766 | $ - | $ (1,640,766) | 7,795,000 | $ 885,000 |
| Revenue bonds payable | 4,135,000 | 1,219,695 | (100,000) | 5,254,695 | 219,052 |
| Less: deferred amounts: | | | | | |
| Issuance costs | - | (26,421) | - | (26,421) | - |
| Total bonds payable | 13,570,766 | 1,193,274 | (1,740,766) | 13,023,274 | 1,104,052 |
| Capital leases | 3,785,186 | 1,285,425 | (1,586,639) | 3,483,972 | 1,460,622 |
| Net pension obligation | 16,803,797 | 7,518,949 | (3,263,326) | 21,059,420 | 7,156,801 |
| Claims and judgments | 2,075,000 | 3,401,529 | (2,075,000) | 3,401,529 | 3,062,175 |
| Compensated absences | 1,358,400 | 1,437,259 | (1,358,400) | 1,437,259 | 1,437,259 |
| Governmental activities Long-term liabilities | $ 37,593,149 | $ 14,836,436 | $ (10,024,131) | $ 42,405,454 | $ 14,220,909 |

| | Business-Type Activities | | | | |
|---|---|---|---|---|---|
| | Beginning Balance | Additions | Reductions | Ending Balance | Due Within One Year |
| Revenue bonds payable | $ 22,100,000 | $ - | $ (825,000) | $ 21,275,000 | $ 875,000 |
| Less: deferred amounts: | | | | | |
| Issuance discounts | (964,984) | - | 103,087 | (861,897) | - |
| Capital leases | 67,765 | 88,807 | (72,818) | 83,754 | 28,983 |
| Compensated absences | 62,247 | 68,522 | (62,247) | 68,522 | 68,522 |
| Business-type activities Long-term liabilities | $ 21,265,028 | $ 157,329 | $ (856,978) | $ 20,565,379 | $ 972,505 |

## G. Contributed Capital

There were no changes in the proprietary and similar component unit contributed capital accounts during the year.

## H. Restricted Assets

The balances of the restricted asset accounts in the enterprise funds are as follow:

| | | |
|---|---|---|
| Customer deposits | $ | 91,014 |
| Revenue bond operations and maintenance account | | 1,206,639 |
| Revenue bond construction account | | 31,638 |
| Revenue bond debt service account | | 2,358,890 |
| Revenue bond renewal and replacement account | | 21,852 |
| Total restricted assets | $ | 3,710,033 |

## I. Benefits Funded by the State of West Virginia

For the year ended June 30, 2003, the State of West Virginia contributed estimated payments on behalf of City employees as follows:

| Plan | | Amount |
|---|---|---|
| Policemen's Pension and Relief Fund | $ | 989,441 |
| Firemen's Pension and Relief Fund | $ | 1,162,738 |

State contributions are funded by allocations of the State's insurance premium tax.

## J. Prior Period Adjustment

The following governmental fund balances required restatement at the beginning of the year as follows:

| | | General Fund | | Solid Waste | | Springhill Park Cemetery |
|---|---|---|---|---|---|---|
| Fund balances, as previously stated | $ | 10,603,725 | $ | 959,802 | $ | 1,154,174 |
| Add: | | | | | | |
| Prior year receivables | | 487,004 | | 194,173 | | - |
| Checking account balance | | - | | - | | 2,098 |
| Fund balances, restated | $ | 11,090,729 | $ | 1,153,975 | $ | 1,156,272 |

The following fiduciary net assets required restatement at the beginning of the year as follows:

| | | Policemen's Pension and Relief | | Firemen's Pension and Relief |
|---|---|---|---|---|
| Net assets, as previously stated | $ | 13,696,615 | $ | 6,281,501 |
| Add: | | | | |
| Employee contributions error | | 17,537 | | (17,537) |
| Expense prior year error | | 5,880 | | - |
| Net assets, restated | $ | 13,720,032 | $ | 6,263,964 |

### K. Environmental Remediation Costs

In 1997, The Sanitary Board, a discretely presented component unit, was ordered by the West Virginia Division of Environmental Protection to submit a plan for environmental remediation relating to sludge removal at Copenhaver Park. At June 30, 2003, the Sanitary Board has accrued its best estimate of its obligation regarding the site, which is presented in the Statement of Net Assets under Noncurrent Liabilities: Due in more than one year. The Sanitary Board could incur additional obligations. It is reasonably possible that the recorded estimates of the obligation may change in the near term.

## V. Other Information

### A. Risk Management

The government is exposed to various risks of loss related to torts, theft of, damage to and destruction of assets; errors and omissions; and natural disasters for which the government carries insurance with Commercial Insurance Services for umbrella (general liability) insurance for these various risks.

Liabilities are reported when it is probable a loss has occurred and the amount of the loss can be reasonably estimated.

Claims liabilities are calculated considering the effects of inflation, recent claim settlement trends including frequency and amount of pay-outs and other economic and social factors. The liability for claims and judgments include an amount for claims that have been incurred but not reported. Changes in the balances of claims liabilities during the fiscal year are as follows:

| | Year Ended June 30, 2003 |
|---|---|
| Unpaid claims, beginning of fiscal year | $ 2,075,000 |
| Incurred claims | 3,401,529 |
| Claim payments | (2,075,000) |
| Unpaid claims, end of fiscal year | $ 3,401,529 |

The government is the owner and permit holder for the City of Charleston's landfill. In accordance with the provisions of an Operating Agreement between the government and contractor dated February 15, 1994, the government maintains a contingency fund for the closure/post closure costs for the landfill in the event of default by contractor.

### B. Contingent Liabilities

Amounts received or receivable from grant agencies are subject to audit and adjustment by grantor agencies, principally the federal government. Any disallowed claims, including amounts already collected, may constitute a liability of the applicable funds. The amount, if any, of expenditures that may be disallowed by the grantor cannot be determined at this time, although the government expects such amounts, if any, to be immaterial.

The government is a defendant in various lawsuits. Although the outcome of these lawsuits is not presently determinable, in the opinion of the government's counsel the resolution of these matters will not have a material adverse effect on the financial condition of the government.

### C. Other Post Employment Benefits

The government does not provide post retirement health benefits except those mandated by the Consolidated Omnibus Budget Reconciliation at (COBRA). The requirements established by COBRA are fully funded by employees who elect coverage under the Act, and no direct costs are incurred by the City, however, employees who elect COBRA are covered under the City's self-insured health plan as all active employees and those retired employees who maintain City health plan coverage.

## VI. Employee Retirement Systems and Plans

*VI.A.1. Plan Descriptions, Contribution Information, and Finding Policies*

The Municipality of Charleston, West Virginia participates in two single employer, public employee retirement systems. Assets are held separately and may be used only for the payment of benefits to the members of the respective plans, as follows:

The Policemen's Pension and Relief Fund (PPRF) provides retirement benefits for substantially all full-time police employees. Unless otherwise indicated, PPRF information in this Note is provided as of the latest actuarial valuation, July 1, 2001.

The Firemen's Pension and Relief Fund (FPRF) provides retirement benefits for substantially all full-time fire employees. Unless otherwise indicated, FPRF information in this Note is provided as of the latest actuarial valuation, July 1, 2002.

Actuarial valuations are required to be performed once every three years per state statute. However, the actuarial valuations can be performed in shorter intervals at the discretion of the PPRF and FPRF's board. For additional information relating to basis of accounting and reported investment values, see Notes I.C., I.D.1. and IV.I.

Memberships of the plans are as follows:

| Group | PPRF | FPRF | Totals |
|---|---|---|---|
| Active Employees | 169 | 196 | 365 |
| Vested Terminated Benefits | 4 | 0 | 4 |
| Retirees and Beneficiaries Currently Receiving Benefits | 86 | 123 | 209 |
| Total | 259 | 319 | 578 |

These plans are defined benefit plans. The following is a summary of funding policies, contribution methods and benefit provisions.

| | PPRF | FPRF |
|---|---|---|
| Determination of contribution requirements | Actuarially determined | Actuarially determined |
| Employer | Contributes annually an amount which, together with contributions from the members and the allocable portion of the state premium tax fund, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years. However, municipalities may utilize an alternative contribution method which allows the municipality to contribute no less than 107% of the prior year contribution provided the actuary certifies in writing that the fund will be solvent over the next 15 years under this method. In no event can the employer contribution be less than the normal cost as determined by the actuary. | |
| Plan Members | 7% of covered payroll | 7% of covered payroll |
| Period Required to Vest | No vesting occurs. If separation from employment occurs the member is entitled to a refund of his/her contributions only | |
| Post-Retirement Benefit Increases | Cost of living adjustment after two years of retirement. Adjustment calculated on the first $15,000 of the total annual benefit in the first year and then the cumulative index for the preceding year. The supplemental pension benefit shall not exceed four percent. | |
| Eligibility for Distribution | 20 years of credited service or age 65; whichever first. Must be at least age 50. | |
| Provisions for: | | |
| Disability Benefits | Yes | Yes |
| Death Benefits | Yes | Yes |

*Annual Required Contributions and Significant Actuarial Assumptions*

The actuarial assumptions and other information used to determine the annual required contributions (ARC) are as follows:

| | Policemen's Pension & Relief Fund | Firemen's Pension & Relief Fund |
|---|---|---|
| Valuation Date | 7/1/2001 | 7/1/2002 |
| Actuarial Cost Method | Projected Unit Credit | Projected Unit Credit |
| Amortization Method | Level Percentage Open | Level Percentage Open |
| Amortization Period | 40 Years (Level Percentage) | 40 Years (Level Percentage) |
| Actuarial Asset Valuation Method | Market Value | Market Value |
| Actuarial Assumptions: | | |
| Investment Rate of Return | 6.375% | 7.00% |
| Projected Salary Increases | 25.5% per year (0-2) 4.25 thereafter | 25.5% per year (0-1) 4.25 thereafter |
| Post Retirement Benefit Increases | None | None |
| Inflation | 3.00% | 3.00% |
| Cost of Living Adjustments | $15,000 of annual pension is increased by the lesser of inflation and 4%, but 75% of purchasing power is maintained. | $15,000 of annual pension is is increased by the lesser of inflation and 4%, but 75% of purchasing power is maintained. |

*VI.A.2. Annual Pension Cost, Net Pension Obligation and Reserves*

Current year annual pension costs for the PPRF and FPRF are shown in the trend information provided in VI.A.4. The annual required contributions were not made by both the PPRF or FPRF. The net pension obligation is listed in VI.A.3.

*Reserves*

There are no assets legally reserved for purposes other than the payment of plan members benefits for either plan.

*VI:A.3 Annual Pension Cost and Net Pension Obligation (NPO)*

The municipality's annual pension cost and net pension obligation for the Policemen's and Firemen's Pension and Relief funds are as follows:

| | PPRF | FPRF |
|---|---|---|
| Annual required contribution | $ 3,282,630 | $ 3,874,171 |
| Interest on short term | 646,347 | 466,551 |
| Adjustment to annual required contribution | (438,718) | (312,033) |
| Annual pension cost | 3,490,259 | 4,028,689 |
| Contributions made | 1,265,982 | 1,997,344 |
| Increase in net pension obligation | 2,224,277 | 2,031,345 |
| Net pension obligation at beginning of the year | 10,138,780 | 6,665,017 |
| Net pension obligation at the end of the year | $ 12,363,057 | $ 8,696,362 |

*VI.A.4. Trend Information*

Policemen's Pension and Relief Fund (PPRF)

| Fiscal Year | Annual Pension Cost | Percentage Contributed | Net Pension Obligation |
|---|---|---|---|
| 2003 | $ 3,490,259 | 36% | $ 12,363,057 |
| 2002 | $ 3,443,960 | 34% | $ 10,138,780 |
| 2001 | $ 3,003,290 | 37% | $ 7,887,981 |
| 2000 | $ 2,948,550 | 35% | $ 5,980,449 |

Firemen's Pension and Relief Fund (FPRF)

| Fiscal Year | Annual Pension Cost | Percentage Contributed | Net Pension Obligation |
|---|---|---|---|
| 2003 | $ 4,028,690 | 50% | $ 8,696,363 |
| 2002 | $ 3,438,807 | 54% | $ 6,665,017 |
| 2001 | $ 3,404,524 | 51% | $ 5,092,887 |
| 2000 | $ 3,321,120 | 49% | $ 3,432,921 |

*VI.B.1 Plan Descriptions Contribution Information and Funding Policies*

Public Employee Retirement System (PERS)

The Municipality of Charleston, West Virginia participates in a state-wide, cost-sharing, multiple-employer defined benefit plan on behalf of general municipal employees. The system is administered by agencies of the State of West Virginia and funded by contributions from participants, employers, and state appropriations, as necessary.

The following is a summary of eligibility factors, contribution methods, and benefit provisions:

| | Public Employees Retirement System |
|---|---|
| Eligibility to participate | All city full-time employees, except those covered by PPRF and FPRF |
| Authority establishing contribution obligations and benefit provisions | State Statute |
| Plan member's contribution rate | 4.50% |
| Municipality's contribution rate | 9.50% |
| Period required to vest | Five Years |
| Benefits and eligibility for distribution | A member who has attained age 60 and has earned 5 years or more of contributing service or age 55 if the sum of his/her age plus years of credited service is equal to or greater than 80. The final average salary (three highest consecutive years in the last 10) times the years of service times 2% equals the annual retirement benefit. |
| Deferred retirement portion | No |
| Provisions for: | |
| Cost of Living | No |
| Death | Yes |

*VI.B.2. Trend Information*

Public Employees' Retirement System (PERS)

| Fiscal Year | Annual Pension Cost | Percentage Contributed |
|---|---|---|
| 2003 | $ 1,089,353 | 100% |
| 2002 | $ 1,514,240 | 99% |
| 2001 | $ 1,540,706 | 100% |
| 2000 | $ 1,566,043 | 100% |

PERS issues a publicly available financial report that includes financial statements and required supplementary information. That information may be obtained by writing to the Public Employees' Retirement System, Building 5, Room 1000, 1900 Kanawha Boulevard East, Charleston, WV 25305.

## I. DEFINED BENEFIT PENSION TRUSTS-SCHEDULES OF FUNDING PROGRESS

### Policemen's Pension and Relief Fund (PPRF)

| Actuarial Valuation Date | Actuarial Value of Assets (a) | Actuarial Accrued Liability (AAL) Entry Age (b) | Unfunded AAL (UAAL) (b)-(a) | Funded Ratio (a)/(b) | Covered Payroll c | UAAL as a % Covered Payroll (b-a)/c |
|---|---|---|---|---|---|---|
| 7/1/1997 | $11,329,860 | $65,658,421 | $54,328,561 | 17% | $6,430,212 | 845% |
| 7/1/1999 | $13,183,185 | $68,856,200 | $55,673,015 | 19% | $6,545,780 | 851% |
| 7/1/2001 | $14,436,077 | $76,015,300 | $61,579,223 | 19% | $6,606,800 | 932% |

### Firemen's Pension and Relief Fund (FPRF)

| Actuarial Valuation Date | Actuarial Value of Assets (a) | Actuarial Accrued Liability (AAL) Entry Age (b) | Unfunded AAL (UAAL) (b)-(a) | Funded Ratio (a)/(b) | Covered Payroll c | UAAL as a % Covered Payroll (b-a)/c |
|---|---|---|---|---|---|---|
| 7/1/1998 | $6,613,424 | $71,358,728 | $64,745,304 | 9% | $7,063,357 | 917% |
| 7/1/2000 | $6,492,763 | $68,627,600 | $62,134,837 | 9% | $7,140,380 | 870% |
| 7/1/2002 | $6,281,501 | $79,213,700 | $72,932,199 | 8% | $7,674,090 | 950% |

# *COMBINING AND INDIVIDUAL FUND FINANCIAL STATEMENTS*

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING BALANCE SHEET - NONMAJOR GOVERNMENTAL FUNDS
June 30, 2003

| ASSETS | Special Revenue | Capital Projects | Debt Service Sinking Fund | Permanent Springhill Cemetery | Total Nonmajor Governmental Funds |
|---|---|---|---|---|---|
| **Current:** | | | | | |
| Cash and cash equivalents | $ 1,003,906 | $ 2,264,343 | $ 2,311,166 | $ 221,860 | $ 5,801,275 |
| Investments | -- | -- | -- | 973,658 | 973,658 |
| Receivables - net: | -- | -- | -- | -- | -- |
| Taxes | -- | -- | 91,897 | -- | 91,897 |
| Accounts | 432,751 | -- | -- | -- | 432,751 |
| Grants | 98,725 | -- | -- | -- | 98,725 |
| Loans | 1,799,783 | -- | -- | -- | 1,799,783 |
| Accrued interest | 566 | -- | -- | 11,849 | 12,415 |
| Due from: | | | | | |
| Other funds | 49,121 | -- | -- | -- | 49,121 |
| Restricted cash | 1,028,153 | -- | 133,898 | -- | 1,162,051 |
| Total assets | 4,413,005 | 2,264,343 | 2,536,961 | 1,207,367 | 10,421,676 |
| **LIABILITIES AND FUND BALANCES** | | | | | |
| **Liabilities:** | | | | | |
| Accounts payable | 311,755 | 70,185 | -- | -- | 381,940 |
| Due to: | | | | | |
| Other funds | 155,246 | -- | -- | -- | 155,246 |
| Deferred revenue | 1,293,549 | -- | -- | -- | 1,293,549 |
| Total liabilities | 1,760,550 | 70,185 | -- | -- | 1,830,735 |
| **Fund balances:** | | | | | |
| Unreserved | 450,603 | -- | -- | -- | 450,603 |
| Reserved for: | | | | | |
| Perpetual care | -- | -- | -- | 1,207,367 | 1,207,367 |
| Debt service | -- | -- | 2,536,961 | -- | 2,536,961 |
| Community development | 2,063,769 | -- | -- | -- | 2,063,769 |
| Capital projects | -- | 2,194,158 | -- | -- | 2,194,158 |
| Public safety | 138,083 | -- | -- | -- | 138,083 |
| Total fund balances | 2,652,455 | 2,194,158 | 2,536,961 | 1,207,367 | 8,590,941 |
| Total liabilities and fund balances | $ 4,413,005 | $ 2,264,343 | $ 2,536,961 | $ 1,207,367 | $ 10,421,676 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES -
NONMAJOR GOVERNMENTAL FUNDS
For the Fiscal Year Ended June 30, 2003

| | Special Revenue | Capital Projects | Debt Service Sinking Fund | Permanent Springhill Cemetery | Total Nonmajor Governmental Funds |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| Taxes: | | | | | |
| Ad valorem property taxes | $ -- | $ -- | $ 2,494,176 | $ -- | $ 2,494,176 |
| Intergovernmental: | | | | | |
| Federal | 5,347,036 | -- | -- | -- | 5,347,036 |
| State | 25,593 | -- | -- | -- | 25,593 |
| Local | 20,602 | -- | -- | -- | 20,602 |
| Charges for services | 3,870,893 | -- | -- | -- | 3,870,893 |
| Fines and forfeits | 734,757 | -- | -- | -- | 734,757 |
| Interest and investment earnings | 101,166 | 55,857 | 39,467 | 46,863 | 243,353 |
| Reimbursements | -- | 54,773 | -- | -- | 54,773 |
| Contributions and donations | 40,080 | -- | -- | 15,766 | 55,846 |
| Miscellaneous | 72 | 90,000 | -- | 25,206 | 115,278 |
| Total revenues | 10,140,199 | 200,630 | 2,533,643 | 87,835 | 12,962,307 |
| **EXPENDITURES:** | | | | | |
| Current: | | | | | |
| General government | 17,064 | -- | -- | -- | 17,064 |
| Public safety | 1,007,034 | -- | -- | -- | 1,007,034 |
| Streets and transportation | 9,578 | -- | -- | -- | 9,578 |
| Health and sanitation | 1,047,241 | -- | -- | -- | 1,047,241 |
| Administrative and general | 13,806 | -- | -- | -- | 13,806 |
| Culture and recreation | -- | -- | -- | 36,740 | 36,740 |
| Social services | 231,508 | -- | -- | -- | 231,508 |
| Capital projects | -- | 4,871,264 | -- | -- | 4,871,264 |
| Economic development | 4,455,237 | -- | -- | -- | 4,455,237 |
| Debt service: | | | | | |
| Principal | -- | -- | 1,740,766 | -- | 1,740,766 |
| Interest | -- | -- | 879,354 | -- | 879,354 |
| Total expenditures | 6,781,468 | 4,871,264 | 2,620,120 | 36,740 | 14,309,592 |
| Excess (deficiency) of revenues over (under) expenditures | 3,358,731 | ( 4,670,634) | ( 86,477) | 51,095 | ( 1,347,285) |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES -
NONMAJOR GOVERNMENTAL FUNDS
For the Fiscal Year Ended June 30, 2003

| | Special Revenue | Capital Projects | Debt Service Sinking Fund | Permanent Springhill Cemetery | Total Nonmajor Governmental Funds |
|---|---|---|---|---|---|
| **OTHER FINANCING SOURCES (USES)** | | | | | |
| Transfers in | $ 65,679 | $ 3,247,579 | $ 341,267 | $ -- | $ 3,654,525 |
| Transfers (out) | ( 3,170,401) | ( 930,902) | -- | -- | ( 4,101,303) |
| Contributions | -- | ( 26,014) | -- | -- | ( 26,014) |
| Total other financing sources (uses) | ( 3,104,722) | 2,290,663 | 341,267 | -- | ( 472,792) |
| Net change in fund balances | 254,009 | ( 2,379,971) | 254,790 | 51,095 | ( 1,820,077) |
| Fund balances - beginning | 2,398,446 | 4,574,129 | 2,282,171 | 1,156,272 | 10,411,018 |
| Fund balances - ending | $ 2,652,455 | $ 2,194,158 | $ 2,536,961 | $ 1,207,367 | $ 8,590,941 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING BALANCE SHEET - NONMAJOR GOVERNMENTAL - SPECIAL REVENUE FUNDS
June 30, 2003

| | Municipal Stabilization | Community Development | Supportive Housing | FEMA Flood Recovery | Municipal Beautification |
|---|---|---|---|---|---|
| **ASSETS** | | | | | |
| **Current:** | | | | | |
| Cash and cash equivalents | $ 75,955 | $ 7,631 | $ -- | $ 20,479 | $ 15,661 |
| Receivables - net: | | | | | |
| Accounts | -- | -- | -- | -- | -- |
| Grants | -- | -- | -- | -- | -- |
| Loans | -- | 1,429,025 | 23,052 | -- | -- |
| Accrued interest | -- | 114 | -- | -- | -- |
| Due from: | | | | | |
| Other funds | -- | -- | -- | -- | -- |
| Restricted cash | -- | -- | -- | -- | -- |
| Total assets | 75,955 | 1,436,770 | 23,052 | 20,479 | 15,661 |
| **LIABILITIES AND FUND BALANCES** | | | | | |
| **Liabilities:** | | | | | |
| Accounts payable | -- | 42,276 | 23,052 | -- | 234 |
| Due to: | | | | | |
| Other funds | -- | 29,299 | -- | -- | -- |
| Deferred revenue | -- | 1,061,617 | -- | 20,479 | -- |
| Total liabilities | -- | 1,133,192 | 23,052 | 20,479 | 234 |
| **Fund balances:** | | | | | |
| Unreserved | 75,955 | -- | -- | -- | 15,427 |
| Reserved for: | | | | | |
| Community development | -- | 303,578 | -- | -- | -- |
| Public safety | -- | -- | -- | -- | -- |
| Total fund balances | 75,955 | 303,578 | -- | -- | 15,427 |
| Total liabilities and fund balances | $ 75,955 | $ 1,436,770 | $ 23,052 | $ 20,479 | $ 15,661 |

| Special Demolition | Sister Cities | Solid Waste | Police & Fire Donations | Asset Forfeiture | Municipal Court | Human Rights |
|---|---|---|---|---|---|---|
| $ 94,256 | $ 1,179 | $ 30,291 | $ 52,767 | $ 23,492 | $ 555 | $ 138,432 |
| -- | -- | 305,171 | -- | -- | 23,077 | 50 |
| -- | -- | -- | -- | -- | -- | -- |
| -- | -- | -- | -- | -- | -- | -- |
| -- | -- | -- | -- | -- | -- | -- |
| -- | -- | -- | -- | -- | -- | -- |
| -- | -- | 1,028,153 | -- | -- | -- | -- |
| 94,256 | 1,179 | 1,363,615 | 52,767 | 23,492 | 23,632 | 138,482 |
| -- | -- | 64,556 | 606 | 500 | -- | 519 |
| -- | -- | -- | -- | -- | 23,077 | -- |
| -- | -- | -- | -- | -- | -- | 121,744 |
| -- | -- | 64,556 | 606 | 500 | 23,077 | 122,263 |
| 94,256 | 1,179 | 270,906 | -- | -- | -- | 16,219 |
| -- | -- | 1,028,153 | -- | -- | -- | -- |
| -- | -- | -- | 52,161 | 22,992 | 555 | -- |
| 94,256 | 1,179 | 1,299,059 | 52,161 | 22,992 | 555 | 16,219 |
| $ 94,256 | $ 1,179 | $ 1,363,615 | $ 52,767 | $ 23,492 | $ 23,632 | $ 138,482 |

| Rental Rehabilitation | Department of Transportation Grant | Local Law Enforcement Block Grant | Metro Loan | Police Grants | Total Nonmajor Special Revenue Funds |
|---|---|---|---|---|---|
| $ 347,362 | $ 26,292 | $ 94,902 | $ 40,231 | $ 34,421 | $ 1,003,906 |
| -- | -- | -- | -- | 104,453 | 432,751 |
| -- | 98,725 | -- | -- | -- | 98,725 |
| 210,837 | -- | -- | 136,869 | -- | 1,799,783 |
| 73 | -- | -- | 379 | -- | 566 |
| -- | -- | -- | -- | 49,121 | 49,121 |
| -- | -- | -- | -- | -- | 1,028,153 |
| 558,272 | 125,017 | 94,902 | 177,479 | 187,995 | 4,413,005 |
| -- | 99,235 | 25,785 | -- | 54,992 | 311,755 |
| 3,713 | 49,121 | -- | -- | 50,036 | 155,246 |
| -- | -- | 56,540 | -- | 33,169 | 1,293,549 |
| 3,713 | 148,356 | 82,325 | -- | 138,197 | 1,760,550 |
| -- | ( 23,339) | -- | -- | -- | 450,603 |
| 554,559 | -- | -- | 177,479 | -- | 2,063,769 |
| -- | -- | 12,577 | -- | 49,798 | 138,083 |
| 554,559 | ( 23,339) | 12,577 | 177,479 | 49,798 | 2,652,455 |
| $ 558,272 | $ 125,017 | $ 94,902 | $ 177,479 | $ 187,995 | $ 4,413,005 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES -
NONMAJOR GOVERNMENTAL - SPECIAL REVENUE FUNDS
For the Fiscal Year Ended June 30, 2003

| | Municipal Stabilization | Community Development | Supportive Housing | FEMA Flood Recovery |
|---|---|---|---|---|
| **REVENUES** | | | | |
| Intergovernmental: | | | | |
| Federal | $ -- | $ 2,707,650 | $ 258,198 | $ 116,988 |
| State | -- | -- | -- | -- |
| Local | -- | -- | -- | -- |
| Charges for services | -- | -- | -- | -- |
| Fines and forfeits | -- | -- | -- | -- |
| Interest and investment earnings | 670 | 69,920 | -- | -- |
| Contributions and donations | -- | -- | -- | -- |
| Miscellaneous | -- | -- | -- | -- |
| Total revenues | 670 | 2,777,570 | 258,198 | 116,988 |
| **EXPENDITURES:** | | | | |
| Current: | | | | |
| General government | -- | -- | -- | -- |
| Public safety | -- | -- | -- | 171,973 |
| Streets and transportation | -- | -- | -- | -- |
| Health and sanitation | -- | -- | -- | -- |
| Administrative and general | -- | -- | -- | -- |
| Social services | -- | -- | -- | -- |
| Economic development | -- | 2,733,823 | 258,198 | -- |
| Total expenditures | -- | 2,733,823 | 258,198 | 171,973 |
| Excess (deficiency) of revenues over (under) expenditures | 670 | 43,747 | -- | ( 54,985) |
| **OTHER FINANCING SOURCES (USES)** | | | | |
| Transfers in | 50,000 | -- | -- | -- |
| Transfers (out) | -- | -- | -- | -- |
| Total other financing sources (uses) | 50,000 | -- | -- | -- |
| Net change in fund balances | 50,670 | 43,747 | -- | ( 54,985) |
| Fund balances - beginning | 25,285 | 259,831 | -- | 54,985 |
| Fund balances - ending | $ 75,955 | $ 303,578 | $ -- | $ -- |

| Municipal Beautification | Special Demolition | Sister Cities | Solid Waste | Police & Fire Donations | Asset Forfeiture | Municipal Court |
|---|---|---|---|---|---|---|
| $ -- | $ -- | $ -- | $ -- | $ -- | $ -- | $ -- |
| -- | -- | -- | -- | -- | -- | -- |
| 6,295 | 14,307 | -- | -- | -- | -- | -- |
| -- | -- | -- | 3,870,893 | -- | -- | -- |
| -- | -- | -- | -- | -- | 22,472 | 712,285 |
| 290 | 1,139 | 3 | 21,432 | 569 | 426 | -- |
| -- | -- | -- | -- | 40,080 | -- | -- |
| -- | -- | -- | -- | -- | -- | -- |
| 6,585 | 15,446 | 3 | 3,892,325 | 40,649 | 22,898 | 712,285 |
| -- | -- | -- | -- | -- | -- | 17,064 |
| -- | -- | -- | -- | 20,074 | 26,272 | -- |
| 9,578 | -- | -- | -- | -- | -- | -- |
| -- | -- | -- | 1,047,241 | -- | -- | -- |
| -- | -- | -- | -- | -- | -- | 13,806 |
| -- | -- | -- | -- | -- | -- | 231,508 |
| -- | -- | -- | -- | -- | -- | -- |
| 9,578 | -- | -- | 1,047,241 | 20,074 | 26,272 | 262,378 |
| ( 2,993) | 15,446 | 3 | 2,845,084 | 20,575 | ( 3,374) | 449,907 |
| -- | -- | -- | -- | -- | -- | -- |
| -- | -- | -- | ( 2,700,000) | -- | ( 15,679) | ( 454,722) |
| -- | -- | -- | ( 2,700,000) | -- | ( 15,679) | ( 454,722) |
| ( 2,993) | 15,446 | 3 | 145,084 | 20,575 | ( 19,053) | ( 4,815) |
| 18,420 | 78,810 | 1,176 | 1,153,975 | 31,586 | 42,045 | 5,370 |
| $ 15,427 | $ 94,256 | $ 1,179 | $ 1,299,059 | $ 52,161 | $ 22,992 | $ 555 |

| Human Rights | Rental Rehabilitation | Department of Transportation Grant | Local Law Enforcement Block Grant | Metro Loan | Police Grants | Total Nonmajor Special Revenue Funds |
|---|---|---|---|---|---|---|
| $ 30,170 | $ -- | $ 1,386,965 | $ 142,001 | $ -- | $ 705,064 | $ 5,347,036 |
| -- | -- | -- | -- | 25,000 | 593 | 25,593 |
| -- | -- | -- | -- | -- | -- | 20,602 |
| -- | -- | -- | -- | -- | -- | 3,870,893 |
| -- | -- | -- | -- | -- | -- | 734,757 |
| -- | 239 | 202 | 1,879 | 4,397 | -- | 101,166 |
| -- | -- | -- | -- | -- | -- | 40,080 |
| -- | -- | -- | -- | 72 | -- | 72 |
| 30,170 | 239 | 1,387,167 | 143,880 | 29,469 | 705,657 | 10,140,199 |
| -- | -- | -- | -- | -- | -- | 17,064 |
| -- | -- | -- | 159,217 | -- | 629,498 | 1,007,034 |
| -- | -- | -- | -- | -- | -- | 9,578 |
| -- | -- | -- | -- | -- | -- | 1,047,241 |
| -- | -- | -- | -- | -- | -- | 13,806 |
| -- | -- | -- | -- | -- | -- | 231,508 |
| 30,170 | 22,476 | 1,410,506 | -- | 64 | -- | 4,455,237 |
| 30,170 | 22,476 | 1,410,506 | 159,217 | 64 | 629,498 | 6,781,468 |
| -- | ( 22,237) | ( 23,339) | ( 15,337) | 29,405 | 76,159 | 3,358,731 |
| -- | -- | -- | 11,687 | -- | 3,992 | 65,679 |
| -- | -- | -- | -- | -- | -- | ( 3,170,401) |
| -- | -- | -- | 11,687 | -- | 3,992 | ( 3,104,722) |
| -- | ( 22,237) | ( 23,339) | ( 3,650) | 29,405 | 80,151 | 254,009 |
| 16,219 | 576,796 | -- | 16,227 | 148,074 | ( 30,353) | 2,398,446 |
| $ 16,219 | $ 554,559 | $ ( 23,339) | $ 12,577 | $ 177,479 | $ 49,798 | $ 2,652,455 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING BALANCE SHEET - NONMAJOR GOVERNMENTAL - CAPITAL PROJECTS FUNDS
June 30, 2003

| | Infrastructure | Bridge | South Side Bridge Ramp | South Side Recreation | Civic Center Project |
|---|---|---|---|---|---|
| **ASSETS** | | | | | |
| **Current:** | | | | | |
| Cash and cash equivalents | $ 120,358 | $ 31,260 | $ -- | $ 8,080 | $ -- |
| Total assets | 120,358 | 31,260 | -- | 8,080 | -- |
| **LIABILITIES AND FUND BALANCES** | | | | | |
| **Liabilities:** | | | | | |
| Accounts payable | -- | -- | -- | -- | -- |
| Total liabilities | -- | -- | -- | -- | -- |
| **Fund balances:** | | | | | |
| Reserved for: | | | | | |
| Capital projects | 120,358 | 31,260 | -- | 8,080 | -- |
| Total fund balances | 120,358 | 31,260 | -- | 8,080 | -- |
| Total liabilities and fund balances | $ 120,358 | $ 31,260 | $ -- | $ 8,080 | $ -- |

| Civic Center Capital Improvement | Municipal Auditorium Capital Improvement | Center for Arts and Sciences | Soccer Field | General Maintenance | Public Safety | Total Nonmajor Capital Projects Funds |
|---|---|---|---|---|---|---|
| $ 454,307 | $ 123,943 | $ -- | $ 2,547 | $ 1,513,840 | $ 10,008 | $ 2,264,343 |
| 454,307 | 123,943 | -- | 2,547 | 1,513,840 | 10,008 | 2,264,343 |
| -- | -- | -- | -- | 70,185 | -- | 70,185 |
| -- | -- | -- | -- | 70,185 | -- | 70,185 |
| 454,307 | 123,943 | -- | 2,547 | 1,443,655 | 10,008 | 2,194,158 |
| 454,307 | 123,943 | -- | 2,547 | 1,443,655 | 10,008 | 2,194,158 |
| $ 454,307 | $ 123,943 | $ -- | $ 2,547 | $ 1,513,840 | $ 10,008 | $ 2,264,343 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES -
NONMAJOR GOVERNMENTAL - CAPITAL PROJECTS FUNDS
For the Fiscal Year Ended June 30, 2003

| | Infrastructure | Bridge | South Side Bridge Ramp | South Side Recreation | Civic Center Project |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| Interest and investment earnings | $ 1,783 | $ 425 | $ 12,494 | $ 360 | $ -- |
| Reimbursements | -- | -- | -- | -- | -- |
| Miscellaneous | -- | -- | -- | -- | -- |
| Total revenues | 1,783 | 425 | 12,494 | 360 | -- |
| **EXPENDITURES:** | | | | | |
| Current: | | | | | |
| Capital projects | -- | -- | -- | -- | -- |
| Total expenditures | -- | -- | -- | -- | -- |
| Excess (deficiency) of revenues over (under) expenditures | 1,783 | 425 | 12,494 | 360 | -- |
| **OTHER FINANCING SOURCES (USES)** | | | | | |
| Transfers in | -- | -- | -- | -- | -- |
| Transfers (out) | -- | -- | ( 854,542) | -- | ( 124) |
| Contributions | -- | -- | -- | ( 25,000) | -- |
| Total other financing sources (uses) | -- | -- | ( 854,542) | ( 25,000) | ( 124) |
| Net change in fund balances | 1,783 | 425 | ( 842,048) | ( 24,640) | ( 124) |
| Fund balances - beginning | 118,575 | 30,835 | 842,048 | 32,720 | 124 |
| Fund balances - ending | $ 120,358 | $ 31,260 | $ -- | $ 8,080 | $ -- |

| Civic Center Capital Improvement | Municipal Auditorium Capital Improvement | Center for Arts and Sciences | Soccer Field | General Maintenance | Public Safety | Total Nonmajor Capital Projects Funds |
|---|---|---|---|---|---|---|
| $ 5,748 | $ 1,341 | $ 15,327 | $ 18 | $ 18,300 | $ 61 | $ 55,857 |
| -- | 54,773 | -- | -- | -- | -- | 54,773 |
| -- | -- | -- | -- | 90,000 | -- | 90,000 |
| 5,748 | 56,114 | 15,327 | 18 | 108,300 | 61 | 200,630 |
| -- | -- | 1,604,298 | -- | 3,266,966 | -- | 4,871,264 |
| -- | -- | 1,604,298 | -- | 3,266,966 | -- | 4,871,264 |
| 5,748 | 56,114 | ( 1,588,971) | 18 | ( 3,158,666) | 61 | ( 4,670,634) |
| 96,502 | -- | -- | -- | 3,151,077 | -- | 3,247,579 |
| ( 8,884) | -- | ( 17,292) | -- | ( 50,000) | ( 60) | ( 930,902) |
| -- | -- | -- | ( 1,014) | -- | -- | ( 26,014) |
| 87,618 | -- | ( 17,292) | ( 1,014) | 3,101,077 | ( 60) | 2,290,663 |
| 93,366 | 56,114 | ( 1,606,263) | ( 996) | ( 57,589) | 1 | ( 2,379,971) |
| 360,941 | 67,829 | 1,606,263 | 3,543 | 1,501,244 | 10,007 | 4,574,129 |
| $ 454,307 | $ 123,943 | $ -- | $ 2,547 | $ 1,443,655 | $ 10,008 | $ 2,194,158 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF FIDUCIARY NET ASSETS
AGENCY FUNDS
June 30, 2003

| | Metro Drug Enforcement Task Force | Pending Forfeiture | Civic Center Ticket | Police Asset & Liability | Totals |
|---|---|---|---|---|---|
| **ASSETS** | | | | | |
| Cash and cash equivalents | $ 42,517 | $ 406,022 | $ 219,238 | $ 6,274 | $ 674,051 |
| Investments, at fair value: | | | | | |
| Other investments | - - | - - | 496,830 | - - | 496,830 |
| Total assets | 42,517 | 406,022 | 716,068 | 6,274 | 1,170,881 |
| **LIABILITIES** | | | | | |
| Accounts payable | 42,517 | 406,022 | 716,068 | 6,274 | 1,170,881 |
| Total liabilities | $ 42,517 | $ 406,022 | $ 716,068 | $ 6,274 | $ 1,170,881 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF PLAN NET ASSETS
PENSION TRUST FUNDS
June 30, 2003

| | Pension Trust Funds | | |
|---|---|---|---|
| | Policemen's Pension and Relief | Firemen's Pension and Relief | Totals |
| **ASSETS** | | | |
| Non-pooled cash | $ 3,437,463 | $ 1,060,293 | $ 4,497,756 |
| Pooled cash | -- | -- | -- |
| Total cash | 3,437,463 | 1,060,293 | 4,497,756 |
| Investments, at fair value: | | | |
| Federal government securities | 1,897,387 | 2,479,645 | 4,377,032 |
| Managed bond funds | 8,534,124 | -- | 8,534,124 |
| Managed stock funds | -- | 2,790,104 | 2,790,104 |
| Total investments | 10,431,511 | 5,269,749 | 15,701,260 |
| Receivables: | | | |
| Interest receivable | 90,108 | 23,666 | 113,774 |
| Mortgage loans receivable | 7,900 | -- | 7,900 |
| Total receivables | 98,008 | 23,666 | 121,674 |
| Total assets | $ 13,966,982 | $ 6,353,708 | $ 20,320,690 |
| **LIABILITIES** | | | |
| Accounts payable | 11,108 | 3,022 | 14,130 |
| Benefits payable | -- | 335,081 | 335,081 |
| Total liabilities | 11,108 | 338,103 | 349,211 |
| **NET ASSETS** | | | |
| Net assets held in trust for pension benefits | $ 13,955,874 | $ 6,015,605 | $ 19,971,479 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF CHANGES IN PLAN NET ASSETS
PENSION TRUST FUNDS
For the Fiscal Year Ended June 30, 2003

| | Pension Trust Funds | | |
|---|---|---|---|
| | Policemen's Pension and Relief | Firemen's Pension and Relief | Totals |
| **ADDITIONS:** | | | |
| Contributions: | | | |
| Employer | $ 1,265,982 | $ 1,997,344 | $ 3,263,326 |
| Plan members | 469,866 | 528,327 | 998,193 |
| Insurance premium surtax | 989,441 | 1,162,738 | 2,152,179 |
| Total contributions | 2,725,289 | 3,688,409 | 6,413,698 |
| Investment income: | | | |
| Net increase(decrease) in fair value of investments | 573,031 | ( 113,806) | 459,225 |
| Interest and dividends | 548,007 | 202,106 | 750,113 |
| Miscellaneous | - - | - - | - - |
| Less: investment expense | ( 42,919) | ( 18,593) | ( 61,512) |
| Net investment income | 1,078,119 | 69,707 | 1,147,826 |
| Total additions | 3,803,408 | 3,758,116 | 7,561,524 |
| **DEDUCTIONS:** | | | |
| Benefits | 3,497,408 | 3,982,182 | 7,479,590 |
| Administrative expenses | 14,242 | 24,293 | 38,535 |
| Refunds of contributions | 55,916 | - - | 55,916 |
| Total deductions | 3,567,566 | 4,006,475 | 7,574,041 |
| Change in net assets | 235,842 | ( 248,359) | ( 12,517) |
| Net assets held in trust for pension benefits: | | | |
| Beginning of year | 13,720,032 | 6,263,964 | 19,983,996 |
| End of year | $ 13,955,874 | $ 6,015,605 | $ 19,971,479 |

*SINGLE AUDIT REPORTING PACKAGE*

State of West Virginia
Office of the State Auditor
1900 Kanawha Boulevard, East
State Capitol Complex, Building 1, Room W-100
Charleston, West Virginia 25305

Glen B. Gainer III
State Auditor

Telephone: (304) 558-2251
FAX: (304) 558-5200
Internet: http://www.wvauditor.com

# REPORT ON COMPLIANCE AND ON INTERNAL CONTROL OVER FINANCIAL REPORTING BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

Honorable Mayor and Council
Municipality of Charleston
Charleston, West Virginia 25330

We have audited the financial statements of the Municipality of Charleston, West Virginia, as of and for the year ended June 30, 2003, and have issued our report thereon, dated February 5, 2004. In that report, our opinion was qualified because other auditors determined the Charleston Sanitary Board failed to properly reflect the value of the donated sewer system. We conducted our audit in accordance with auditing standards generally accepted in the United States of America, and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States.

## Compliance

As part of obtaining reasonable assurance about whether the Municipality's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*. However, we have reported an immaterial instance of noncompliance on the Schedule of Findings and Questioned Costs as item 2003-1.

**Internal Control Over Financial Reporting**

In planning and performing our audit, we considered the Municipality's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control over financial reporting. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over financial reporting and its operation that we consider to be material weaknesses. However, we noted other matters that we have reported to management in a separate letter dated February 5, 2004.

This report is intended solely for the information and use of the audit committee, management, others within the organization, and City Council, and federal and state awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Respectfully submitted,

Glen B. Gainer III
West Virginia State Auditor

February 5, 2004

State of West Virginia

Glen B. Gainer III
State Auditor

Office of the State Auditor
1900 Kanawha Boulevard, East
State Capitol Complex, Building 1, Room W-100
Charleston, West Virginia 25305

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# REPORT ON COMPLIANCE WITH REQUIREMENTS APPLICABLE TO EACH MAJOR PROGRAM AND ON INTERNAL CONTROL OVER COMPLIANCE IN ACCORDANCE WITH OMB CIRCULAR A-133 AND SUPPLEMENTARY SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS

Honorable Mayor and Council
Municipality of Charleston
Charleston, West Virginia 25330

## Compliance

We have audited the compliance of the Municipality of Charleston, West Virginia, with the types of compliance requirements described in the U.S. Office of Management and Budget (OMB) Circular A-133, Compliance Supplement that are applicable to its major federal program for the year ended June 30, 2003. The Municipality's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs. Compliance with the requirements of laws, regulations, contracts and grants applicable to each of its major federal programs is the responsibility of the Municipality's management. Our responsibility is to express an opinion on the Municipality's compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the Municipality's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination on the Municipality's compliance with those requirements.

In our opinion, the Municipality complied, in all material respects, with the requirements referred to above that are applicable to each of its major federal programs for the year ended June 30, 2003.

## Internal Control Over Compliance

The management of the Municipality is responsible for establishing and maintaining effective internal control over compliance with requirements of laws, regulations, contracts and grants applicable to federal programs. In planning and performing our audit, we considered the Municipality's internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133.

Our consideration of the internal control over compliance would not necessarily disclose all matters in the internal control that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that noncompliance with the applicable requirements of laws, regulations, contracts and grants that would be material in relation to a major federal program being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over compliance and its operation that we consider to be material weaknesses.

## Schedule of Expenditures of Federal Awards

We have audited the financial statements of the Municipality, as of and for the year ended June 30, 2003, and issued our report thereon dated February 5, 2004. Our audit was performed for the purpose of forming opinions on the financial statements that collectively comprise the Municipality of Charleston, West Virginia's financial statements. The Sanitary Board, a component unit of the municipality, was audited by other auditors whose report was qualified due to the Sanitary Board not reflecting certain fixed assets at fair value on the date of donation. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by OMB Circular A-133 and is not a required part of the basic financial statements of the Municipality of Charleston, West Virginia. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated, in all material respects, in relation to the basic financial statements taken as a whole.

This report is intended solely for the information and use of the audit committee, management, others within the organization, City Council, and federal and state awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Respectfully submitted,

Glen B. Gainer III
West Virginia State Auditor

February 5, 2004

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For the Fiscal Year Ended June 30, 2003

| | Federal CFDA Number | Pass-Through Entity Number | Total Expenditures |
|---|---|---|---|
| **U. S. Department of Housing and Urban Development** | | | |
| Direct programs: | | | |
| Program Title | | | |
| *Community Development Block Grants-Entitlement Grants* | 14.218 | | $ 2,622,417 |
| *Emergency Shelter Grants Program* | 14.231 | | 85,118 |
| *Supportive Housing Program* | 14.235 | | 235,146 |
| *HOME Investment Partnerships Program* | 14.239 | | 732,648 |
| Pass-through Programs From: | | | |
| West Virginia Development Office | | | |
| Program Title | | | |
| *Emergency Shelter Grants Program* | 14.231 | S-01-DC-54-001 | 23,639 |
| | | S-02-DC-54-001 | 103,653 |
| **Total U. S. Department of Housing and Urban Development** | | | $ 3,802,621 |
| **U. S. Department of Justice** | | | |
| Direct Programs: | | | |
| Program Title | | | |
| *Grants to Encourage Arrest Policies and Enforcement of Protection Orders* | 16.590 | | 118,815 |
| *Local Law Enforcement Block Grants Program* | 16.592 | | 159,217 |
| *High Intensity Drug Trafficking Area (HITA)* | 16.NA | | 11,325 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For the Fiscal Year Ended June 30, 2003

| | Federal CFDA Number | Pass-Through Entity Number | Total Expenditures |
|---|---|---|---|
| Pass-through Programs From: | | | |
| West Virginia Department of Criminal Justice Services | | | |
| Program Title | | | |
| *Juvenile Accountability Incentive Block Grants* | 16.523 | 01-A-D-101 | $ 41,000 |
| *Crime Victim Assistance* | 16.575 | C174037/G030624 | 2,500 |
| | | 00-VA-043 | 6,929 |
| | | 01-VA-028 | 27,875 |
| *Byrne Formula Grant Program* | 16.579 | 01-DC-03 | 29,069 |
| | | 02-DC-06 | 178,427 |
| *Violence Against Women Formula Grants* | 16.588 | 00-VAW-032 | 4,787 |
| | | 01-VAW-031 | 55,051 |
| *Local Law Enforcement Block Grants Program* | 16.592 | N/A | 5,000 |
| | | 01-JJV-003 | 7,036 |
| **Total U. S. Department of Justice** | | | $ 647,031 |
| **U.S. Department of Transportation** | | | |
| Pass-through Programs From: | | | |
| West Virginia Department of Transportation | | | |
| Direct programs: | | | |
| Program Title | | | |
| *Highway Planning and Construction* | 20.205 | TEA-OQ22(001)E | $ 19,357 |
| *State and Community Highway Safety* | 20.600 | F02-HS-04 | 57,523 |
| | | F00-HS-07 | 4,717 |
| | | F02-HS-05 | 42,361 |
| *Alcohol Traffic Safety and Drunk Driving Prevention Incentive Grants* | 20.601 | F02-J8-04 | 4,326 |
| | | CDDP 02-26 | 17 |
| | | CDDP 03-07 | 500 |
| | | CDDP 03-09 | 3,614 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For the Fiscal Year Ended June 30, 2003

| | Federal CFDA Number | Pass-Through Entity Number | Total Expenditures |
|---|---|---|---|
| *Occupant Protection* | 20.602 | F02-157INV2-05 | $ 5,997 |
| | | F03-J3-02 | 7,000 |
| **Total U.S. Department of Transportation** | | | $ 145,412 |
| **U.S. Federal Emergency Management Agency** | | | |
| Pass-through Programs From: | | | |
| West Virginia Office of | | | |
| Emergency Services | | | |
| Program Title | | | |
| *Flood Mitigation Assistance* | 83.536 | DR-1319WV-0006 | 171,973 |
| *State and Local All Hazards Emergency Operations Planning* | 83.562 | | 10,080 |
| *Citizen Corps* | 83.564 | | 6,120 |
| **Total U.S. Federal Emergency Management Agency** | | | $ 188,173 |
| **TOTAL FEDERAL AWARDS EXPENDITURES** | | | **$ 4,783,237** |

NA- indicates the program number was not available

The accompanying notes are an integral part of this schedule.

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
NOTES OF SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For the Fiscal Year Ended June 30, 2003

## NOTE 1 - BASIS OF PRESENTATION

The accompanying schedule of expenditures of federal awards includes the federal grant activity of the Municipality of Charleston, West Virginia and is presented on the accrual basis of accounting. The information in this schedule is presented in accordance with the requirements of OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations.* Therefore, some amounts presented in this schedule may differ from amounts presented in, or used in the preparation of the financial statements.

## NOTE 2 - SUBRECIPIENT DISBURSEMENTS

Of the federal expenditures presented in the schedule, the Municipality of Charleston, West Virginia provided federal awards to subrecipients as follows:

| Program Title | Federal CFDA Number | Amount Provided to Subrecipients |
|---|---|---|
| *HOME Investment Partnerships Program* | 14.239 | $ 49,000 |
| *Byrne Formula Grant Program* | 16.579 | 58,264 |
| *Violence Against Women Formula Grants* | 16.588 | 2,035 |
| *State and Community Highway Safety* | 20.600 | 2,565 |
| *Alcohol Traffic Safety and Drunk Driving Prevention Incentive Grants* | 20.601 | 7,558 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

## Section I -Summary of Auditor's Results

**Financial Statements**

| | |
|---|---|
| Type of auditor's report issued: | Qualified |
| Internal Control over Financial Reporting: | |
| Material weakness identified? | No |
| Reportable condition identified that is not considered to be a material weakness? | No |
| Non compliance material to the financial statements noted? | No |
| **Federal Awards** | Unqualified |
| Internal Control over Major Programs: | |
| Material weakness identified? | No |
| Reportable condition identified that is not considered to be a material weakness? | No |
| Type of auditor's report issued on compliance for major programs: | Unqualified |
| Any audit findings disclosed that are required to be reported in accordance with § _.510(a) of Circular A-133? | No |

Identification of major programs:

| CFDA Numbers | Name of Federal Program |
|---|---|
| 14.218 | Community Development Block Grants-Entitlement Grants |
| 14.239 | HOME Investment Partnerships Program |
| 16.579 | Byrne Formula Grant Program |

| | |
|---|---|
| Dollar threshold used to distinguish between Type A and Type B Program: | $ 300,000 |
| Auditee qualify as a low-risk auditee? | No |

Section II -Financial Statement Findings

**Supplemental Pension Benefit**
**2003-1**

**CONDITION:**

It was noted during our examination that the Municipality of Charleston failed to correctly calculate the cost of living adjustment for the Police and Fire retirees.

**CRITERIA:**

West Virginia Code § 8-22-26a states in part that:

> ...."the supplemental benefit shall only be calculated on the allowable amount, which is the first fifteen thousand dollars of the total annual benefit paid."

**CAUSE:**

The municipality calculates the cost of living adjustment on the first fifteen thousand dollars of pension income plus prior years cost of living adjustments. The inclusion of prior years cost of living adjustments creates a cumulative effect which could exceed the maximum allowable amount, which is the first fifteen thousand dollars of the total benefits paid.

**EFFECT:**

The municipality, by incorrectly calculating the COLA, is overpaying some pension benefit payments in both the Policemen's and Firemen's Pension Funds.

**RECOMMENDATION:**

The municipality should review statute 8-22-26a concerning supplemental pension benefits and comply with the provisions set forth therein.

**AUDITED AGENCY'S RESPONSE:**

The municipal officials stated that they are waiting for a ruling from the West Virginia Attorney General's Office before a change in the calculation is made.

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

## Section III -Federal Award Findings and Questioned Costs

There were no findings at the single audit level for this audit

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
CORRECTIVE ACTION PLAN
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

---

There were no findings at the federal program level therefore no corrective action plan is necessary.

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS
For the Fiscal Year Ended June 30, 2003

Status of Prior Year Audit Findings

| Finding Number | Title | Status |
|---|---|---|
| 2002-1 | Supplemental Pension Benefits | Not Resolved |
| 2002-2 | Accounts/Taxes Receivable | Resolved |

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APPENDIX D

Form of Approving Bond Counsel Opinion

**[Letterhead of Jackson Kelly PLLC]**

February ____, 2005

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

Re: The City of Charleston, West Virginia
$2,845,000* Parking System Bond Anticipation Note, Series 2005

Ladies and Gentlemen:

We have acted as bond counsel to The City of Charleston, West Virginia (the "Issuer"), a municipal corporation, in connection with the issuance of its $2,845,000* Parking System Bond Anticipation Note, Series 2005, dated the date hereof (the "Note"). In such capacity, we have examined such law and such certified proceedings, certifications and other documents as we have deemed necessary to render this opinion.

The Note is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 12, Chapter 8, Article 16 and Chapter 13, Article 2E of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and under and pursuant to a Parking System Refunding Note and Bond Ordinance duly passed by the Issuer on January 18, 2005, effective February 7, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on February 7, 2005 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Note is authorized and issued. Capitalized terms used and not otherwise defined herein shall have the respective meanings given them in the Ordinance.

In connection with the issuance of the Note, the Issuer has executed a Tax Certificate, dated as of the date hereof (the "Tax Certificate"), which, among other things, sets forth restrictions on the investment and expenditure of the Note proceeds and earnings thereon, to ensure that the 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 Note from gross income for federal income tax purposes, are and will continue to be met.

---

*Estimated, subject to change.

Regarding questions of fact material to our opinion, we have relied upon representations of the Issuer contained in the herein-described documents and certifications furnished to us by or on behalf of the Issuer (including certifications as to matters which are material to paragraph 4 below), without undertaking to verify the same by independent investigation.

The Note is issued in the form of one fully registered Note.

Based upon the foregoing, 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 the power to adopt the Ordinance, which has been duly and lawfully enacted and adopted by the Issuer, is in full force and effect and is valid and binding upon the Issuer and enforceable in accordance with its terms, and no other authorization for the Ordinance is required.

2. The Issuer is duly authorized to issue the Note, which Note has been duly and validly authorized and issued in accordance with the Act and in accordance with the Ordinance, and constitutes a valid, binding revenue obligation of the Issuer as provided in the Ordinance, payable and enforceable in accordance with their terms and the terms of the Ordinance and are entitled to the benefits of the Ordinance and of the Act.

3. The Note is unsecured and payable solely from the proceeds of the Issuer's Parking System Refunding Revenue Bonds, Series 2005 B, when, as and if issued, is not secured by the revenues of the Issuer's parking system, and does not constitute a debt or general obligation of the Issuer within the meaning of any constitutional or statutory provisions or limitations.

4. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, interest on the Note is not includable in the gross income of the owners thereof for federal income tax purposes and is not at item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. It should be noted, however, that interest on the Note held by a corporation may be subject indirectly to alternative minimum tax because of its inclusion in the adjusted current earnings of such corporate holder. The opinions set forth in the preceding sentences are subject to the condition that the Issuer comply, on a continuing basis, with all representations, covenants and certifications set forth in the Ordinance and the Tax Certificate and other documents relating thereto. Failure to comply with certain of such representations, covenants and certifications could cause the interest on the Note to be includable in a holder's gross income retroactive to the date of issuance of the Note. Except as described herein, we express no opinion regarding other federal tax consequences arising with respect to the Note.

5. Under the Act, as presently written and applied, the Note and any interest thereon is exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

It is to be understood that the rights of the owners of the Note and the enforceability of the Note, the Ordinance and the pledges set forth therein are limited bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, and by the exercise of judicial discretion. Further, we express no opinion regarding tax consequences arising with respect to the Note other than as expressly set forth herein.

We have not been engaged, or undertaken, to review the accuracy, completeness or sufficiency of the Official Statement or other offering material related to the Note (except to the extent, if any, stated in the Official Statement) and we express no opinion relating thereto.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

We have examined the executed and authenticated Note numbered NR-1 and in our opinion, the form of said Note and its execution and authentication are regular and proper.

Very truly yours,

**[Letterhead of Jackson Kelly PLLC]**

February ____, 2005

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

Re: The City of Charleston, West Virginia
$2,845,000* Parking System Refunding Revenue Bonds,
Series 2005 B

Ladies and Gentlemen:

We have acted as bond counsel to The City of Charleston, West Virginia (the "Issuer"), a municipal corporation, in connection with the issuance of its $2,845,000* Parking System Refunding Revenue Bonds, Series 2005 B, dated the date hereof (the "Bonds"). In such capacity, we have examined such law and such certified proceedings, certifications and other documents as we have deemed necessary to render this opinion.

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 8, Article 12, Chapter 8, Article 16 and Chapter 13, Article 2E of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and under and pursuant to a Parking System Refunding Note and Bond Ordinance duly passed by the Issuer on January 18, 2005, effective February 7, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on February 7, 2005 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued. Capitalized terms used and not otherwise defined herein shall have the respective meanings given them in the Ordinance.

*Estimated, subject to change.

In connection with the issuance of the Bonds, the Issuer has executed a Tax Certificate, dated as of the date hereof (the "Tax Certificate"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the 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.

Regarding questions of fact material to our opinion, we have relied upon representations of the Issuer contained in the herein-described documents and certifications furnished to us by or on behalf of the Issuer (including certifications as to matters which are material to paragraph 4 below), without undertaking to verify the same by independent investigation.

The Bonds are issued in the form of a series of fully registered Bonds.

Based upon the foregoing, 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 the power to enact the Ordinance, which has been duly and lawfully enacted and adopted by the Issuer, is in full force and effect and is valid and binding upon the Issuer and enforceable in accordance with its terms, and no other authorization for the Ordinance is required.

2. The Issuer is duly authorized to issue the Bonds, which Bonds have been duly and validly authorized and issued in accordance with the Act and in accordance with the Ordinance, and constitutes a valid, binding revenue obligation of the Issuer as provided in the Ordinance, payable and enforceable in accordance with their terms and the terms of the Ordinance and are entitled to the benefits of the Ordinance and of the Act.

3. The Bonds are secured by the Net Revenues of the Parking System and from funds on deposit in the Sinking Fund and Reserve Account, on parity with the Issuer's Parking System Refunding Revenue Bonds, Series 2005 A, all as more fully described in the Ordinance.

4. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, interest on the Bonds is not includable in the gross income of the owners thereof for federal income tax purposes and is not at item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. It should be noted, however, that interest on the Bonds held by a corporation may be subject indirectly to alternative minimum tax because of its inclusion in the adjusted current earnings of such corporate holder. The opinions set forth in the preceding sentences are subject to the condition that the Issuer comply, on a continuing basis, with all representations, covenants and certifications set forth in the Ordinance and the Tax Certificate and other documents relating thereto. Failure to comply with certain of such representations,

covenants and certifications could cause the interest on the Bonds to be includable in a holder's gross income retroactive to the date of issuance of the Bonds. Except as described herein, we express no opinion regarding other federal tax consequences arising with respect to the Bonds.

5. Under the Act, as presently written and applied, 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.

It is to be understood that the rights of the owners of the Bonds and the enforceability of the Bonds, the Ordinance and the pledges set forth therein are limited bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, and by the exercise of judicial discretion. Further, we express no opinion regarding tax consequences arising with respect to the Bonds other than as expressly set forth herein.

We have not been engaged, or undertaken, to review the accuracy, completeness or sufficiency of the Official Statement or other offering material related to the Bonds (except to the extent, if any, stated in the Official Statement) and we express no opinion relating thereto.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

We have examined the executed and authenticated Bond numbered BR-1 and in our opinion, the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

APPENDIX E

Form of Continuing Disclosure Certificate

This Continuing Disclosure Certificate (the "Certificate"), dated as of February 1, 2005, is provided by The City of Charleston, West Virginia (the "City"), under the terms of an Ordinance enacted by the City on February 7, 2005 (the "Ordinance"), authorizing the issuance of the $2,620,000 City of Charleston, Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes"), and when, as and if issued, the $2,620,000 City of Charleston, Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds" and, together with the Series 2005 Notes, the "Series 2005 Bonds"). The Series 2005 Bonds were sold pursuant to the terms of a Bond Purchase Agreement dated February __, 2005, by and between the Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (collectively, the "Underwriters") and the City. Capitalized terms used in this Certificate shall have the respective meanings specified above or in Article IV hereof. The parties agree as follows:

ARTICLE I

The Undertaking

Section 1.1. Purpose. This Certificate shall constitute a written undertaking for the benefit of the holders of the Series 2005 Bonds and is being executed and delivered solely to assist the Underwriters in complying with subsection (b)(1) of the Rule.

Any filing under this Certificate may be made solely by transmitting such filing to the Texas Municipal Advisory Council (the "Central Post Office" or "MAC") as provided at http://www.disclosureusa.org unless the United States Securities and Exchange Commission has withdrawn the interpretive advice in its letter to the MAC dated September 7, 2004.

Section 1.2. Annual Financial Information. (a) The City shall provide Annual Financial Information with respect to each fiscal year of the City, commencing with the fiscal year ended June 30, 2005, by no later than 180 days after the end of each fiscal year, to the Central Post Office for delivery to each NRMSIR and the SID.

(b) The City shall provide, in a timely manner, notice of any failure of the City to provide the Annual Financial Information by the date specified in subsection (a) above to the Central Post Office for delivery to (i) either the MSRB or each NRMSIR, and (ii) the SID.

Section 1.3. Material Event Notices. (a) If a Material Event occurs, the City shall provide, in a timely manner, notice of each Material Event to the Central Post Office for delivery to (i) either the MSRB or each NRMSIR, (ii) the SID, and (iii) the Underwriters.

(b) Any notice of defeasance of the Series 2005 Bonds shall state whether the

Series 2005 Bonds have been escrowed to maturity or to an earlier redemption date and the timing of such maturity or redemption.

Section 1.4. Additional Disclosure Obligations. The City acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the City and that, under some circumstances, additional disclosures or other action in addition to those required by this Certificate may be required to enable the City to fully discharge all of its duties and obligations under such laws.

Section 1.5. Additional Information. Nothing in this Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Certificate or any other means of communication, or including any other information in any Annual Financial Information or notice of Material Event hereunder, in addition to that that is required by this Certificate. If the City chooses to do so, the City shall have no obligation under this Certificate to update such additional information or include it in any future Annual Financial Information or notice of a Material Event hereunder.

Section 1.6. No Previous Non-Compliance. The City represents that since December 1, 2004, it has not failed to comply in any material respect with any previous undertaking in a written contract or certificate, as entered into or issued by the City, specified in paragraph (b)(5)(i) of the Rule.

## ARTICLE II

## Operating Rules

Section 2.1. Reference to Other Documents. It shall be sufficient for purposes of this Certificate if the City provides Annual Financial Information by specific reference to documents (i) either (1) provided to the Central Post Office for delivery to each NRMSIR existing at the time of such reference and the SID or (2) filed with the SEC, or (ii) if such document is an Official Statement, available from the MSRB.

Section 2.2. Submission of Information. Annual Financial Information may be provided in one document or multiple documents, and at one time or in part from time to time.

Section 2.3. Transmission of Information and Notices. Unless otherwise required by law, the City shall employ such methods of information and notice transmission as it shall so determine. All deliveries to the Central Post Office shall be by electronic transmission at the website for the Central Post Office.

Section 2.4. Fiscal Year. The City's current fiscal year is the twelve-month period ending on June 30. The City shall promptly notice (i) the Central Post Office for delivery to each NRMSIR and the SID and (ii) the Underwriters of each change in its fiscal year.

## ARTICLE III

### Effective Date, Termination, Amendment and Enforcement

Section 3.1. Effective Date; Termination. (a) This Certificate shall be effective upon the issuance of the Series 2005 Bonds.

(b) The City's obligations under this Certificate shall terminate upon a legal defeasance, prior redemption or payment in full of all of the Series 2005 Bonds.

(c) This Certificate, or any provision hereof, shall be null and void in the event that the City (1) delivers to the Trustee an opinion of Counsel, addressed to the City and the Trustee, to the effect that those portions of the Rule which require this Certificate, or such provision, as the case may be, do not or no longer apply to the Series 2005 Bonds, whether because such portions of the Rule are invalid, have been repealed, or otherwise, as shall be specified in such opinion, and (2) delivers copies of such opinion to the Central Post Office for delivery to each NRMSIR and the SID.

Section 3.2. Amendment. (a) This Certificate may be amended, by written Agreement of the City, without the consent of the holders of the Series 2005 Bonds, if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the City or the type of business conducted thereby, (2) this Certificate as so amended would have complied with the requirements of the Rule as of the date of this Certificate, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) the State shall have delivered to the Trustee an opinion of Counsel, addressed to the City and the Trustee, to the same effect as set forth in clause (2) above, (4) the City shall have delivered to the Trustee an opinion of Counsel or a determination by a person, in each case unaffiliated with the City (such as bond counsel or the Trustee) and acceptable to the City, addressed to the City and the Trustee, to the effect that the amendment does not materially impair the interests of the holders of the Series 2005 Bonds, and (5) the City shall have delivered copies of such opinion(s) and amendment to the Central Post Office for delivery to each NRMSIR and the SID.

(b) In addition to the provisions contained in subsection (a) above, this Certificate may be amended, by written Agreement of the City, without the consent of the holders of the Series 2005 Bonds, if all of the following conditions are satisfied: (1) an amendment to the Rule is adopted, or a new or modified official interpretation of the Rule is issued, after the effective date of this Certificate which is applicable to this Certificate, (2) the City shall have delivered to the Purchaser an opinion of Counsel, addressed to the City and the Trustee, to the effect that performance by the City under this Certificate as so amended will not result in a violation of the Rule, and (3) the City shall have delivered copies of such opinion and amendment to the Central Post Office for delivery to each NRMSIR and the SID.

(c) To the extent any amendment to this Certificate results in a change in the

type of financial information or operating data provided pursuant to this Certificate, the first Annual Financial Information provided thereafter shall include a narrative explanation of the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

(d) If an amendment is made pursuant to Section 3.2(a) hereof due to a change in the accounting principles to be followed by the City in preparing its financial statements, the Annual Financial Information for the fiscal year in which the change is made shall provide written explanation of such change or changes.

Section 3.3. Benefit; Third-Party Beneficiaries; Enforcement. (a) The provisions of this Certificate shall inure solely to the benefit of the holders from time to time of the Series 2005 Bonds, except that beneficial owners of Series 2005 Bonds shall be third-party beneficiaries of this Certificate and shall be deemed to be holders of Series 2005 Bonds for purposes of Section 3.3(b) hereof. The provisions of this Certificate shall create no rights in any person or entity except as provided in this subsection (a).

(b) The obligations of the City to comply with the provisions of this Certificate shall be enforceable (i) in the case of enforcement of obligations to provide Annual Financial Information and Material Event notices, by any holder of Outstanding Bonds, or by the Trustee on behalf of the holders of Outstanding Bonds, or (ii), in the case of challenges to the adequacy of the Annual Financial Information so provided, by the Trustee on behalf of the holders of Outstanding Bonds; provided, however, that the Trustee shall not be required to take any enforcement action except at the direction of the holders of not less than 25% in aggregate principal amount of the Series 2005 Bonds at the time Outstanding who shall have provided the Trustee with adequate security and indemnity. The holders' and Trustee's rights to enforce the provisions of this Certificate shall be limited solely to right, by action in mandamus or for specific performance, to compel performance of the City's obligations under this Certificate.

(c) Any failure by the City or the Trustee to perform in accordance with this Certificate shall not constitute a default or an Event of Default under the Ordinance, and the rights and remedies provided by the Ordinance upon the occurrence of a default or an Event of Default shall not apply to any such failure.

(d) This Certificate shall be construed and interpreted in accordance with the laws of the State of West Virginia, and any suits and actions arising out of this Certificate shall be instituted in a court of competent jurisdiction in the State of West Virginia; provided, however, that to the extent this Certificate addresses matters of federal securities laws, including the Rule, this Certificate shall be construed in accordance with such federal securities laws and official interpretations thereof.

## ARTICLE IV

## Definitions

Section 4.1. Definitions. The following items used in this Certificate shall have

the following respective meanings:

(a) "Annual Financial Information" means, collectively (i) the City's Comprehensive Annual Financial Report (or any successive document which sets forth comprehensive information relating to the financial position of the City) and (ii) the information regarding amendments to this Certificate required pursuant to Sections 3.2(c) and (d) of this Certificate. Annual Financial Information shall include Audited Financial Statements, if available, or Unaudited Financial Statements.

(b) "Audited Financial Statements" means the annual financial statements, if any, of the City, audited by such auditor as shall then be required or permitted by West Virginia law. Audited Financial Statements shall be prepared in accordance with GAAP.

(c) "Central Post Office" shall mean the Texas Municipal Advisory Council, which shall receive Annual Reports and Listed Events and then electronically transmit them to the NRMSIRs and the State Repository.

(d) "Counsel" means Jackson Kelly PLLC, Charleston, West Virginia, or other nationally recognized bond counsel or counsel expert in federal securities law.

(e) "GAAP" means generally accepted accounting principles as prescribed from time to time for governmental units by the Governmental Accounting Standards Board, the Financial Accounting Standards Board, or any successor to the duties and responsibilities of either of them.

(f) "Material Event" means any of the following events with respect to the Series 2005 Bonds, whether relating to the City or otherwise, if material:

(i) principal and interest payment delinquencies;
(ii) non-payment related defaults;
(iii) unscheduled draws on debt service reserves reflecting financial difficulties;
(iv) unscheduled draws on credit enhancements reflecting financial difficulties;
(v) substitution of credit or liquidity providers, or their failure to perform;
(vi) adverse tax opinions or events affecting the tax-exempt status of the Series 2005 Bonds;
(vii) modifications to rights of security holders;
(viii) bond calls;
(ix) defeasances;
(x) release, substitution or sale of property securing repayment of the Series 2005 Bonds; and
(xi) rating changes.

(g) "MSRB" means the Municipal Securities Rulemaking Board established

pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934.

(h) "NRMSIR" means, at any time, a then-existing nationally recognized municipal securities information repository, as recognized from time to time by the SEC for the purposes referred to in the Rule. The NRMSIRs as of the date of this Certificate are Bloomberg Municipal Repository, DPC Data, Inc., FT Interactive Data and Standard & Poor's J. J. Kenny Repository. Filing information relating to such NRMSIRs is set forth in Exhibit B hereto.

(i) "Official Statement" means "final official statement," as defined in paragraph (f)(3) of the Rule.

(j) "Rule" means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934 (17 CFR Part 240, § 240.15c2-12), as in effect on the date of this Certificate, including any official interpretations thereof issued either before or after the effective date of this Certificate which are applicable to this Certificate.

(k) "SEC" means the United States Securities and Exchange Commission.

(l) "SID" means, at any time, a then-existing state information depository, if any, as operated or designated as such by or on behalf of the State of West Virginia for the purposes referred to in the rule. As of the date of this Certificate, there is no SID.

(m) "Unaudited Financial Statements" means the same as Audited Financial Statements, except that they shall not have been audited.

## ARTICLE V

### Miscellaneous

Section 5.1. Severability. If any one or more sections, clauses, sentences or parts hereof shall for any reason be questioned in any court of competent jurisdiction and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions hereof or thereof, or the Series 2005 Bonds, but shall be confined to the specific sections, clauses, sentences and parts so adjudged.

IN WITNESS WHEREOF, the City has caused this Certificate to be executed by its duly authorized representative as of the date first above written.

THE CITY OF CHARLESTON

By: _____

Mayor

EXHIBIT A

NOTICE TO REPOSITORIES
OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: City of Charleston

Name of Bond Issue: $2,620,000 City of Charleston, Parking System Bond Anticipation Notes, Series 2005, and when, as and if issued, $2,620,000 City of Charleston, Parking System Refunding Revenue Bonds, Series 2005 B

Date of Bond Issue: February 1, 2005, as to the Series 2005 Notes
April 1, 2005, as to the Series 2005 B Bonds

NOTICE IS HEREBY GIVEN that the City has not provided an Annual Report with respect to the above-named Series 2005 Bonds as required by Section 3(b) of this Continuing Disclosure Certificate dated as of February 1, 2005, to be provided. The City anticipates that the Annual Report will be filed by _____, 200_

Dated: _____, 20__

The City of Charleston, West Virginia

By: _____
Mayor

EXHIBIT B

Nationally Recognized Municipal Securities Information Repositories approved by the Securities and Exchange Commission as of February 1, 2005:

Central Post Office
Website: http://www.disclosureusa.org

Bloomberg Municipal Repository
100 Business Park Drive
Skillman, New Jersey 08558
Phone: (609) 279-3225
Fax: (609) 279-5962
http://www.bloomberg.com/markets/muni_contactinfo.html
Email: Munis@Bloomberg.com

DPC Data Inc.
One Executive Drive
Fort Lee, NJ 07024
Phone: (201) 346-0701
Fax: (201) 947-0107
http://www.dpcdata.com
Email: nrmsir@dpcdata.com

FT Interactive Data
Attn: NRMSIR
100 William Street
New York, New York 10038
Phone: (212) 771-6999
Fax: (212) 771-7390 (Secondary Market Information)
(212) 771-7391 (Primary Market Information)
http://www.interactivedata.com
Email: NRMSIR@FTID.com

Standard & Poor's J. J. Kenny Repository
55 Water Street
45th Floor
New York, NY 10041
Phone: (212) 438-4595
Fax: (212) 438-3975
www.jjkenny.com/jjkenny/pser_descrip_data_rep.html
Email: nrmsir_repository@sandp.com

NEW ISSUE—Full Book Entry

*In the opinion of Bond Counsel, interest on the Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes") and the Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds" and, together with the Series 2005 Notes, the "Bonds") are excludable from the gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and such interest will not be treated as a preference item for purposes of the alternative minimum tax imposed under the Code with respect to individuals and corporations. Under the Code, however, such interest is included in the adjusted current earnings of a corporation for the purposes of computing the alternative minimum tax. In addition, under the Act, the Bonds and the interest thereon are exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof (see,* "TAX EXEMPTION" *herein).*

# $2,655,000
# THE CITY OF CHARLESTON, WEST VIRGINIA
# PARKING SYSTEM BOND ANTICIPATION NOTES, SERIES 2005

# AND
# WHEN, AS AND IF ISSUED*

# $2,655,000*
# THE CITY OF CHARLESTON, WEST VIRGINIA
# PARKING SYSTEM REFUNDING REVENUE BONDS, SERIES 2005 B

**Dated:** February 1, 2005, as to the Series 2005 Notes
April 1, 2005*, as to the Series 2005 B Bonds

**Due:** As shown on inside cover

The Bonds will be issued in fully registered form only and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York. DTC will act as securities depository for the Bonds. Individual purchases will be made in book-entry form only in the principal amount of five thousand dollars ($5,000) or integral multiples thereof. Purchasers of the Bonds will not receive certificates representing their interests in the Bonds. See "DESCRIPTION OF BONDS— Book-Entry Only System" herein.

The Bonds will be issued for the purpose of refinancing, together with other funds available therefore, the existing debt incurred in funding or refunding the construction of a portion of a municipal parking system, funding reserve accounts and paying costs of issuance. The proceeds of the Series 2005 Notes will be used to defease and refund The City of Charleston (the "City") Parking System Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds"), dated June 1, 1993, issued in the original principal amount of $5,235,000 and currently outstanding in the principal amount of $3,000,000. The Series 2005 B Bonds, when, as and if issued, will redeem the Series 2005 Notes.

The Series 2005 Notes will be unsecured. The Series 2005 B Bonds will be secured by a lien on the net revenue of the City's parking system (the "Parking System"), on parity with the City's proposed $8,935,000 Parking System Refunding Revenue Bonds, Series 2005 A Bonds (the "Series 2005 A Bonds"), and a statutory mortgage lien on the Parking System. See, "FINANCING PLAN" herein.

Interest on the Series 2005 Notes will accrue from February 1, 2005, and will be payable on June 1 and December 1 of each year beginning June 1, 2005, and principal shall be payable annually on June 1 of each year beginning June 1, 2005. Interest on the Series 2005 B Bonds, if issued, will accrue from April 1, 2005, and will be payable on June 1 and December 1 of each year beginning June 1, 2005, and principal shall be payable annually on June 1 of each year beginning June 1, 2005. The principal of and interest on the Bonds are payable by the Paying Agent to DTC, which will in turn remit such principal and interest to its Participants for subsequent distribution to the Beneficial Owners of the Bonds, as described herein.

The Series 2005 Notes are subject to optional redemption and mandatory tender as more fully described herein. The Series 2005 B Bonds are subject to optional redemption as more fully described herein. (see "DESCRIPTION OF BONDS").

This cover page contains certain information for quick reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain an informative investment decision.

THE SERIES 2005 NOTES ARE UNSECURED AND ARE PAYABLE SOLELY FROM THE PROCEEDS OF THE SERIES 2005 B BONDS, WHEN, AS AND IF ISSUED, ARE NOT SECURED BY THE NET REVENUES OF THE PARKING SYSTEM, AND DO NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE CITY OF CHARLESTON, WEST VIRGINIA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS OR LIMITATIONS.

THE SERIES 2005 B BONDS, IF ISSUED, WILL BE PAYABLE FROM AND SECURED BY A LIEN, ON PARITY WITH THE SERIES 2005 A BONDS, ON THE NET REVENUES OF THE PARKING SYSTEM DERIVED FROM THE OPERATION OF THE PARKING SYSTEM, AND DO NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE CITY OF CHARLESTON, WEST VIRGINIA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS OR LIMITATIONS.

The Series 2005 Notes and the Series 2005 B Bonds are offered when, as and if issued and received, subject to the approval of their legality by Jackson Kelly PLLC, Charleston, West Virginia, Bond Counsel, and to certain other conditions. Certain legal matters will be passed on for the City by Steptoe & Johnson, PLLC, Charleston, West Virginia, and for the Underwriters by Goodwin & Goodwin, LLP, Charleston, West Virginia. It is expected that the Series 2005 Notes will be available for delivery at DTC, New York, New York, on or about February 11, 2005. It is expected that the Series 2005 B Bonds, when, as and if issued, will be available for delivery at DTC, New York, New York, on or about April 1, 2005.

(Maturity Schedule on Inside Cover)

**Crews & Associates, Inc.** **Ferris, Baker Watts, Incorporated**

Dated: February 7, 2005

*The Series 2005 B Bonds, if issued, shall be dated April 1, 2005.

## MATURITY SCHEDULE

Dated: February 1, 2005 Due: June 1, as shown below

SERIES 2005 NOTES
MATURITY, AMOUNT, INTEREST RATE AND PRICE OR YIELD

| Maturity | Principal Amount | Interest Rate | Price or Yield |
|---|---|---|---|
| 2005 | $105,000 | 3.000% | 100.0% |
| 2006 | 300,000 | 3.000 | 100.0 |
| 2007 | 305,000 | 3.000 | 100.0 |
| 2008 | 320,000 | 3.000 | 100.0 |
| 2009 | 335,000 | 3.000 | 100.0 |
| 2010 | 345,000 | 3.000 | 99.50 |
| 2011 | 360,000 | 3.000 | 99.50 |
| 2012 | 370,000 | 3.000 | 99.50 |
| 2013 | 215,000 | 3.000 | 99.50 |

(accrued interest to be added)

---

Dated: April 1, 2005 Due: June 1, as shown below

SERIES 2005 B BONDS*
MATURITY, AMOUNT, INTEREST RATE AND PRICE OR YIELD

| Maturity | Principal Amount | Interest Rate | Price or Yield |
|---|---|---|---|
| 2005 | $105,000 | 3.000% | 3.000% |
| 2006 | 300,000 | 3.500 | 3.500 |
| 2007 | 305,000 | 3.700 | 3.700 |
| 2008 | 320,000 | 3.900 | 3.900 |
| 2009 | 335,000 | 4.000 | 4.000 |
| 2010 | 345,000 | 4.100 | 4.208 |
| 2011 | 360,000 | 4.200 | 4.292 |
| 2012 | 370,000 | 4.300 | 4.381 |
| 2013 | 215,000 | 4.400 | 4.473 |

(accrued interest to be added)

---

* When, as and if issued.

THE CITY OF CHARLESTON, WEST VIRGINIA

MAYOR

Danny Jones

CITY COUNCIL

Patrick Jones
William Hanna
James "Moses" Lanham
Rev. James Ealy
Teresa "Tricky" Reed
Edward Talkington*
Paul James Monroe
Bob White
Betty Morton
Archie Chestnut
Marc Weintraub*
Jim Harris, Jr.
Linda M. Nielsen*
Jack E. Harrison
David Kent Higgins
Brenda H. Robertson
Bobby Reishman*
John Miller, Jr.*
Ditty L. Markham
Cheryle Hall
Michael Clowser
J. Thomas Lane*
Charles W. Loeb, Jr.*
Jerry L. Ware
Harry Deitzler*
Mark A Sadd*
Mary Jean Davis

CITY ADMINISTRATION

James Reishman, City Clerk
Victor Grigoraci, Treasurer
Paul D. Ellis, City Attorney

*Denotes members of the Parking Committee.

The Bonds are exempt from registration under the Securities Act of 1933. As obligations of a political subdivision of the State of West Virginia, the Bonds are also exempt from registration under the securities laws of West Virginia. No dealer, broker, salesman or other person has been authorized by the City or the Underwriter to give any information or to make any representations, other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information and expressions of opinion herein have been obtained from the City and other sources deemed to be reliable but are not guaranteed as to accuracy or completeness by, and are not to be construed as representations of, the Underwriter. The information herein is subject to change without notice. Neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the City or the Parking System since the date hereof.

**IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET, SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.**

Table of Contents

Page


| | Page |
|---|---|
| INTRODUCTION | 1 |
| FINANCING PLAN | 3 |
| SOURCES AND USES OF FUNDS | 3 |
| DESCRIPTION OF BONDS | 5 |
| ADDITIONAL SECURITY FOR THE SERIES 2005 B BONDS | 10 |
| THE PARKING SYSTEM | 13 |
| FINANCIAL OPERATIONS | 14 |
| BANKRUTPCY | 16 |
| LITIGATION | 16 |
| NEGOTIABLE INSTRUMENTS | 16 |
| FINANCIAL STATEMENTS | 16 |
| TAX EXEMPTION | 17 |
| UNDERWRITING | 17 |
| VERIFICATION OF MATHEMATICAL COMPUTATIONS | 18 |
| LEGAL MATTERS | 18 |
| CONTINUING DISCLOSURE | 18 |
| MISCELLANEOUS | 19 |
| APPENDIX A-The City of Charleston | A-1 |
| APPENDIX B-Summary of Certain Provisions of the Bond Ordinance | B-1 |
| APPENDIX C-Audited Financial Statements of City of Charleston | C-1 |
| APPENDIX D-Form of Approving Bond Counsel Opinion | D-1 |
| APPENDIX E-Form of Continuing Disclosure Certificate | E-1 |

$2,655,000
THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM BOND ANTICIPATION NOTES,
SERIES 2005

AND
WHEN, AS AND IF ISSUED

$2,655,000
THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

## INTRODUCTION

This Official Statement, including the cover page (excluding prices), and Appendices hereto, is provided for the purpose of setting forth certain information concerning The City of Charleston, West Virginia (the "City"), the City's municipal parking system hereinafter described, the City's $2,655,000 Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes") and, when, as and if issued, the City's $2,655,000 Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds") (the Series 2005 Notes and the Series 2005 B Bonds, collectively, the "Bonds"). The Bonds are being issued pursuant to the constitution and laws of the State of West Virginia (the "State"), specifically Chapter 8, Article 12, Chapter 8, Article 16 and Chapter 13, Article 2E (collectively, the "Act"), of the Code of West Virginia, 1931, as amended, and an Ordinance passed by City Council of the City on January 18, 2005, effective on February 7, 2005, and a supplemental resolution adopted on February 7, 2005 (the "Supplemental Resolution" and together, the "Ordinance" or "Bond Ordinance").

The Series 2005 Notes, together with other funds available therefore, are being issued to provide funds to defease and refund the City's Parking System Refunding Revenue Bonds, Series 1993 (the "Series 1993 Bonds"), dated June 1, 1993, issued in the original principal amount of $5,235,000 and currently outstanding in the principal amount of $3,000,000 (the "1993 Bonds"), fund debt service reserve funds and pay the costs of issuance thereof. See "FINANCING PLAN" and "ESTIMATED SOURCES AND USES OF FUNDS". The 1993 Bonds were issued to finance or refinance the construction of a portion of the City's municipal parking facilities.

**THE SERIES 2005 NOTES ARE UNSECURED AND PAYABLE SOLELY FROM THE PROCEEDS OF THE SERIES 2005 B BONDS, WHEN, AS AND IF ISSUED, ARE NOT SECURED BY THE NET REVENUES OF THE PARKING SYSTEM, AND DO NOT CONSTITUTE A DEBT OR GENERAL OBLIGATION OF THE CITY OF CHARLESTON, WEST VIRGINIA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS OR LIMITATIONS.**

The Series 2005 B Bonds, when, as and if issued, will be secured by a lien on the net revenue of the City's parking system, as defined below, and by a statutory mortgage lien on the

Parking System. The Series 2005 B Bonds will be issued on parity with the City's proposed $8,935,000* Parking System Refunding Revenue Bonds, Series 2005 A (the "Series 2005 A Bonds"), which, together with other funds available therefore, will be issued to provide funds to defease and refund the City's Parking System Revenue Bonds, Series 1994 A, dated December 15, 1994, issued in the original principal amount of $4,545,000, and currently outstanding in the principal amount of $3,720,000, Parking System Subordinate Revenue Bonds, Series 1994 B, dated December 15, 1994, issued in the original principal amount of $5,455,000, and currently outstanding in the principal amount of $4,035,000 and Parking System Subordinate Revenue Bonds, Series 1995, dated January 1, 1995, issued in the original principal amount of $1,620,000, and currently outstanding in the principal amount of $1,195,000 (collectively, the "Series 1994 and Series 1995 Bonds"). See, "FINANCING PLAN" herein.

Upon issuance of the Series 2005 A Bonds, the Series 2005 B Bonds, if issued, will be payable from and secured by the Net Revenues, as defined in the Ordinance, to be derived from the existing on-street and off-street parking system of the City, together with any extensions and improvements thereto (collectively, the "Parking System"), by a statutory mortgage lien on the Parking System, and from funds on deposit in the Series 2005 B Bonds Reserve Account. The Series 2005 B Bonds will not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, and the City shall not be obligated to pay the Series 2005 B Bonds or any premium or the interest thereon except from such Net Revenues and such funds on deposit. Pursuant to the Ordinance, the City has covenanted and agreed to fix, establish and maintain such rates and collect such fees, rentals or other charges for the services and facilities of the Parking System, and revise the same from time to time whenever necessary, to always provide revenues in each fiscal year at least sufficient to pay one hundred fifteen percent (115%) of the largest amount of principal and interest maturing and becoming due on the Series 2005 B Bonds then outstanding in any succeeding fiscal year, in addition to paying, as the same become due, the necessary expenses of repair (including replacement), maintenance and operation of the Parking System in each fiscal year, and all obligations or indebtedness other than the Series 2005 B Bonds payable out of revenues of the Parking System in such fiscal year. See "Additional Security for the Series 2005 B Bonds - Rate Covenant."

Brief descriptions of the Bonds, the Ordinance, the Parking System, Financial Operations, the City and certain provisions of the Act are set forth in this Official Statement as well as other information contained in the appendices hereto. Such descriptions and information do not purport to be comprehensive or definitive. All references herein to the Ordinance, provisions of the Act, or other applicable laws of the State are qualified in their entirety by reference to each such document. Reference herein to the Bonds are qualified in their entirety by reference to the form thereof included in the Ordinance and the information with respect thereto included in the aforesaid documents.

* Preliminary, subject to change.

## FINANCING PLAN

The proceeds of the Series 2005 Notes will be used to refund and defease the 1993 Bonds. The Series 2005 A Bonds will be issued to refund and defease the Series 1994 and Series 1995 Bonds. Following the refunding and defeasance of the Series 1994 and Series 1995 Bonds, the Series 2005 Notes shall be called by the City, and the City shall deliver the Series 2005 B Bonds in exchange for the Notes. The Act authorizes the imposition of a statutory mortgage lien on the Parking System.

In addition to debt service savings, the refinancing has other benefits that are important to the operation of the Parking System. At closing on the issuance of the Series 2005 A Bonds, the City will use $1,000,000 from the Repair, Maintenance and Operation Fund that was established upon issuance of the 1993 Bonds. The funds will be used to acquire two (2) additional parking lots, containing a total of two hundred twenty-eight (228) parking spaces, in the vicinity of a new baseball stadium currently under construction, which will be added to the Parking System. (Following the issuance of the Series 2005 A Bonds, the amount required to be on deposit in the Repair, Maintenance and Operation Fund will be $200,000 as required by the Ordinance.) The additional revenues from the new parking lots will enhance the City's ability to meet the debt service coverage requirement. Finally, the letter of credit requirement and the associated annual letter of credit fees that are applicable to the Series 1994 and 1995 Bonds will be eliminated upon the issuance of the Series 2005 A Bonds.

The cost of refunding and defeasing the 1993 Bonds is $3,080,488.60. The City plans to fund the Series 2005 Notes Debt Service Reserve Fund in full at closing of the Series 2005 Notes. A portion of the proceeds of the Series 2005 Notes sufficient to refund and defease the 1993 Bonds will be deposited at closing with the West Virginia Municipal Bond Commission, as Escrow Agent, and will be applied to refund and defease the 1993 Bonds. Verification of certain mathematical computations relating to the payment from the Escrow Fund of principal of, premium, if any, and interest on the 1993 Bonds until the date the Notes will be called on March 14, 2005, and the refunding of the 1993 Bonds is completed, will be performed by Smith, Cochran & Hicks, P.L.L.C., Charleston, West Virginia, certified public accountants.

## SOURCES AND USES OF FUNDS

The sources and uses of funds, exclusive of accrued interest, are as follows:

Series 2005 Notes

Sources of Funds

| | |
|---|---|
| Principal Amount of Notes | $2,655,000.00 |
| Transfer from 1993 Sinking Fund | 397,276.11 |
| Transfer from 1993 Debt Service Reserve Fund | 442,420.00 |
| Original Issue Discount | (6,450.00) |
| Total | $3,488,246.11 |

Uses of Funds

| | |
|---|---|
| Series 1993 Escrow Fund (1) | $3,080,488.60 |
| Debt Service Reserve Requirement (2) | 265,500.00 |
| Underwriters' Discount | 66,375.00 |
| Cost of Issuance | 75,882.51 |
| Total | $3,488,246.11 |

(1) The Series 1993 Escrow Fund will be held by the Escrow Agent and disbursed as required by the Ordinance for the repayment of the 1993 Bonds.

(2) The Debt Service Reserve Requirement is the amount equal to the maximum amount of principal and interest which will come due on the Series 2005 B Bonds in any fiscal year, when, as and if issued.

Series 2005 B Bonds, When, As and If Issued (1)

Sources of Funds

| | |
|---|---|
| Principal Amount of Series 2005 B Bonds | $2,655,000.00 |
| Transfer from 2005 Note Debt Service Reserve Fund | 265,500.00 |
| Total | $2,920,500.00 |

Uses of Funds

| | |
|---|---|
| Note Repayment Account (2) | $2,655,000.00 |
| Debt Service Reserve Requirement (3) | 265,500.00 |
| Total | $2,920,500.00 |

(1) This table assumes that the Series 2005 B Bonds will be issued. If the Series 2005 B Bonds are issued, the Series 2005 Notes shall be subject to mandatory tender to the Paying Agent

on or about April 1, 2005, at a price of par plus accrued interest to such date, such amounts payable from funds on deposit in the Note Repayment Account.

(2) The Note Repayment Account will be held by the Paying Agent and disbursed as required by the Ordinance for the repayment of the Notes.

(3) The Debt Service Reserve Requirement is an amount equal to the maximum amount of principal and interest that will come due on the Series 2005 B Bonds in any fiscal year, when, as and if issued.

## DESCRIPTION OF BONDS

### The Bonds

The Bonds are available in book-entry form only. See "Book-Entry Only System" below. So long as Cede & Co. is the registered owner of the Bonds as nominee of The Depository Trust Company, New York, New York, references herein to the Bondholders or registered owners of the Bonds shall mean Cede & Co. and shall not mean the beneficial owners of the Bonds. The West Virginia Municipal Bond Commission, Charleston, West Virginia, shall be the Paying Agent ("Paying Agent") and United Bank, Inc., in Charleston, West Virginia, shall be the Registrar for the Bonds (the "Registrar").

The principal of, premium, if any, and interest on the Bonds will be payable at the office of the Paying Agent.

The Series 2005 Notes will be dated February 1, 2005. When, as and if issued, the Series 2005 B Bonds will be dated April 1, 2005.

Interest on the Series 2005 Notes will accrue from February 1, 2005, and will be payable on June 1 and December 1 of each year beginning June 1, 2005, and principal shall be payable annually on June 1 of each year beginning June 1, 2005. Subject to the issuance of the Series 2005 B Bonds, the Series 2005 Notes will be subject to mandatory tender on April 1, 2005. The Series 2005 B Bonds, when, as and if issued, will bear interest at the rates and mature in the amounts set forth on the cover page of this Official Statement. Interest on the Series 2005 B Bonds will accrue from April 1, 2005, and will be payable on June 1 and December 1 of each year beginning June 1, 2005, and principal shall be payable annually on June 1 of each year beginning June 1, 2005.

The Series 2005 B Bonds shall be payable as to principal at the office of the Paying Agent in any coin or currency which on the respective date of payment of principal and interest, is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2005 B Bonds shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address that appears on the books of the Registrar or, in the event of a default in the payment on the Series 2005 B Bonds, that special record date to be fixed by the Registrar by notice given to the Registered Owners not less than ten (10) days prior to said special record date (the "Special Record Date") or, if requested in the case of such

an owner of $1,000,000 or more in principal amount of Series 2005 B Bonds, by wire transfer to a domestic bank account specified in writing at least five (5) days prior to the Record Date by such owner.

**Mandatory Tender of Note**

By its purchase of the Notes, each Notes holder shall unconditionally and irrevocably agree, upon the authentication and issuance of the Series 2005 B Bonds in accordance with the provisions of the Ordinance and delivery of the Series 2005 B Bonds Bond Counsel Opinion as provided in the Ordinance, and in substantially the form attached as Appendix D hereto, on or about April 1, 2005, to tender on such date its Notes in exchange for the Series 2005 B Bonds in a principal amount equal to the then Outstanding principal amount of its Notes. If the exchange of Notes for Series 2005 B Bonds has not been completed by April 1, 2005, the City shall have a period of sixty (60) days within which to establish a new date for such tender and to complete the same.

**Optional Redemption**

At the option of the City, the Bonds are subject to redemption prior to maturity on or after June 1, 2010, in whole or in part, at any time, in inverse order of maturity by lot within a maturity, at par, plus interest, if any, accrued to the date fixed for redemption.

**Manner of Redemption and Tender**

With respect to mandatory tender of the Notes, within seven (7) business days following the issuance and delivery of the Series 2005 B Bonds under the Ordinance or at least sixteen (16) days following the refunding and defeasance of the Series 1994 and Series 1995 Bonds, the Paying Agent will mail to the persons who were Notes holders immediately prior to the issuance of the Series 2005 B Bonds by first class mail, postage prepaid, at the address of each Notes holder shown on the Bond Register whose Notes have been redeemed under the mandatory tender provisions of the Ordinance and for whom a corresponding Series 2005 B Bond has been purchased under the Ordinance, a notice setting forth the information provided in the Ordinance with respect to the Notes redeemed and advising such holder that upon the surrender of such holders' Notes to the Paying Agent, the Paying Agent will deliver to such Notes holder the Series 2005 B Bond purchased on its behalf. Such notice shall provide the address of the Paying Agent to which Notes are to be presented.

**Notice of Redemption**

The Paying Agent shall cause notice of any redemption of the Bonds to be mailed by first class mail to the Owners of all Bonds to be redeemed at the addresses thereof appearing in the Registration Books. Each such notice shall (i) be mailed not more than 60 days nor less than 30 days prior to the redemption date, (ii) identify the B Bonds to be redeemed (specifying the CUSIP numbers, if any, assigned to the B Bonds), (iii) specify the redemption date and the Redemption Price, and (iv) state that on the redemption date the Bonds called for redemption will be payable at the principal corporate trust office of the Paying Agent, that from that date the B Bonds called for

redemption will be deemed to be paid, and interest will cease to accrue, and that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein. Failure to give such notice of redemption (including any failure to mail such notice) shall not affect the validity of the redemption proceedings for any other Bonds for which notice was properly given.

Under the requirements of the Ordinance, the City cannot redeem all or any part of the Bonds unless funds are available to make such payment prior to the notice of redemption.

**Book-Entry Only System**

The Depository Trust Company, New York, New York ("DTC"), will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered Bond certificate will be issued for each maturity of each respective series of Bonds in the aggregate principal amount of each maturity and will be deposited with DTC.

DTC is a limited-purpose trust company organized under New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds securities that its participants ("Participants") deposit with DTC. DTC also facilitates the settlement among Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks, and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Rules applicable to DTC and its Participants are on file with the United States Securities and Exchange Commission.

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmation providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interest in the Bonds are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of Bonds with DTC and their registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to Cede & Co. If less than all of the Bonds within a series are being redeemed. DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. will consent or vote with respect to Bonds. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, or redemption of, and interest payments on the Bonds will be made to DTC. DTC's practice is to credit Direct Participants' accounts on the payable date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on the payable date. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Paying Agent, or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, redemption premium, if any, and interest to DTC is the responsibility of the City or the Paying Agent, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to the City or the Paying Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Bonds certificates are required to be printed and delivered.

The City may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered.

The information in this section concerning DTC and DTC's book-entry system has been

obtained from sources that the City believes to be reliable, but the City takes no responsibility for the accuracy thereof.

NEITHER THE CITY, THE UNDERWRITER NOR THE PAYING AGENT WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO PARTICIPANTS, TO INDIRECT PARTICIPANTS OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (I) THE ACCURACY OR ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT; (II) THE PAYMENT BY DTC OR ANY PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OF, OR PREMIUM, IF ANY, OR INTEREST ON, THE BONDS; (III) ANY NOTICE WHICH IS PERMITTED OR REQUIRED TO BE GIVEN BY DTC TO BONDHOLDERS; (IV) ANY CONSENT GIVEN BY DTC OR OTHER ACTION TAKEN BY DTC AS BONDHOLDER; OR (V) THE SELECTION BY DTC OR ANY PARTICIPANT OR INDIRECT PARTICIPANT OF ANY BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE BONDS.

So long as the Bonds are held by DTC under a book-entry system, the Paying Agent will send any notice of redemption or other notices with respect to the Bonds required or permitted to be given under the Ordinance only to DTC. Any failure of DTC to advise any Participant, or of any Participant to notify any Indirect Participant or any Beneficial Owner of any such notice and its content or effect will not affect the validity of the proceedings for the redemption of the Bonds or of any other action permitted upon such notice. If fewer than all of the Bonds are selected for redemption, DTC will select the particular account of Participants to which the amount of such redemption will be credited in accordance with DTC's own rules or other agreements with Participants; Participants may then credit such redemption to the particular accounts of Beneficial Owners for whom such Participants act as nominee accordingly. Any such selection of Participants and Beneficial Owners to which any such partial redemption will be credited will not be governed by the Ordinance and will not be made by the City or the Paying Agent.

**Issuance of Additional Bonds**

No parity additional bonds as defined in this subsection, payable out of the Net Revenues of the Parking System, shall be issued after the issuance of any Bonds pursuant to the Ordinance, except under the conditions and in the manner herein provided.

No such parity additional bonds shall be issued unless the Net Revenues derived from the Parking System during any twelve (12) consecutive months during the period of eighteen (18) months immediately prior to the issuance of the additional bonds then proposed to be issued, as set forth in a certificate of an Independent Accountant, appointed by the City, filed with the City Clerk, shall be not less than one hundred fifteen per centum (115%) of the largest amount of principal and interest which will mature and become due in any succeeding year on the Bonds issued pursuant to the Ordinance then Outstanding and on any parity additional bonds theretofore issued and then Outstanding, and on any other obligations then Outstanding which are payable from the Net Revenues of the Parking System, or any part thereof, and on the parity additional bonds then proposed to be issued; provided, however, that if the parity additional bonds are refunding bonds to achieve a debt service savings, then such test shall not apply.

Such parity additional bonds shall be issued only for the financing of the construction and acquisition of additions, extensions and improvements to the Parking System, and all revenues derived therefrom shall be deposited in the Revenue Fund created by the Ordinance or for refunding all or any part of any Bonds Outstanding hereunder.

The term "parity additional bonds" as used in this subsection, shall be deemed to mean additional bonds issued under the provisions and within the limitations of this subsection, payable from the Net Revenues of the Parking System on parity with Bonds originally authorized and issued pursuant to the Ordinance. Such parity additional bonds shall be deemed to have been issued pursuant to the Ordinance, and all of the covenants, agreements and other provisions of the Ordinance (except as to details of such parity additional bonds inconsistent therewith) shall be for the equal benefit, protection and security of the Registered Owners of any Bonds originally authorized and issued pursuant to the Ordinance and the holders of any parity additional bonds subsequently created within the limits of and in compliance with this subsection. All of such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the Parking System and their source and security for payment from said revenues without preference of any Bond, over any other. The City shall comply fully with all the increased payments into the various funds created in the Ordinance required for such parity additional Bonds, in addition to the payments required for Bonds originally issued pursuant to the Ordinance.

The term "parity additional bonds", as used in the Ordinance shall not be deemed to include bonds, notes, certificates, or any other obligations subsequently issued, the lien of which on the Net Revenues of the Parking System, or any part thereof, is subject to the prior and superior lien on such revenues of the Bonds issued pursuant to the Ordinance, and the City shall not issue any obligations whatsoever payable from the Net Revenues of the Parking System, or for payment from such revenues with Bonds issued pursuant to the Ordinance, except in the manner and under the conditions provided in Section 5.09 thereof.

No parity additional bonds, as defined in the Ordinance, shall be issued at any time, however, unless all of the payments into the respective funds provided for in the Ordinance shall have been made in full to the date of issuance of such parity additional bonds, and the City shall have fully complied with all covenants, agreements and terms of the Ordinance.

## ADDITIONAL SECURITY FOR THE SERIES 2005 B BONDS

The Series 2005 B Bonds will be secured by the Bond Ordinance with a lien on the Net Revenues of the Parking System on parity with the Series 2005 A Bonds. In addition, the Act imposes a statutory mortgage lien on the Parking System.

NEITHER THE FULL FAITH AND CREDIT, NOR THE TAXING POWER OF THE CITY, NOR ANY FUNDS OTHER THAN THE NET REVENUES OF THE PARKING SYSTEM AND THE RESPECTIVE RESERVE ACCOUNTS, ARE PLEDGED TO THE PAYMENT OF THE BONDS, AND THE BONDS DO NOT CONSTITUTE A CORPORATE INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION.

**Application of Revenues**

The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the City in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner provided in the Ordinance. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(A) All revenues deposited in the Revenue Fund shall be used first to pay current Operating Expenses of the Parking System.

(B) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) commencing 6 months prior to the first interest payment date of the Series 2005 A Bonds, a sum equal to 1/6th of the amount of interest which will become due on the Series 2005 A Bonds on the next ensuing semiannual interest payment date for deposit in the Series 2005 A Bonds Sinking Fund; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2005 A Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2005 A Bonds deposited therein; and (ii) commencing 6 months prior to the first interest payment date of the Series 2005 B Bonds, a sum equal to 1/6th of the amount of interest which will become due on the Series 2005 B Bonds on the next ensuing semiannual interest payment date for deposit in the Series 2005 B Bonds Sinking Fund; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2005 B Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2005 B Bonds deposited therein.

(C) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission for deposit into the respective Sinking Fund (i) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 2005 A Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 2005 A Bonds on the next ensuing annual principal payment date or mandatory Redemption Date for deposit in the Series 2005 A Bonds Sinking Fund and in the Series 2005 A Bonds Redemption Account in the case of the Term Bonds which are to be redeemed; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing annual principal payment date or mandatory Redemption Date is less than or greater than 12 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next

ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date; and (ii) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 2005 B Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 2005 B Bonds on the next ensuing principal payment date or mandatory Redemption Date for deposit in the Series 2005 B Bonds Sinking Fund and in the Series 2005 B Bonds Redemption Account in the case of the Term Bonds which are to be redeemed; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing annual principal payment date or mandatory Redemption Date is less than or greater than 12 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date.

(D) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) an amount to be deposited in the Series 2005 A Bonds Reserve Account which will be sufficient to remedy any decrease in value of the Series 2005 A Bonds Reserve Account below the Series 2005 A Bonds Reserve Requirement or any withdrawal from the Series 2005 A Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2005 A Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2005 A Bonds Reserve Account is less than the Series 2005 A Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2005 A Bonds Reserve Account for deposit into the Series 2005 A Bonds Sinking Fund; and (ii) an amount to be deposited in the Series 2005 B Bonds Reserve Account which will be sufficient to remedy any decrease in value of the Series 2005 B Bonds Reserve Account below the Series 2005 B Bonds Reserve Requirement or any withdrawal from the Series 2005 B Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2005 B Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2005 B Bonds Reserve Account is less than the Series 2005 B Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2005 B Bonds Reserve Account for deposit into the Series 2005 B Bonds Sinking Fund. To the extent Net Revenues and any other legally available funds are available therefor, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2005 A Bonds Reserve Account or the Series 2005 B Bonds Reserve Account to an amount equal to the respective Reserve Requirement; provided, that no payments shall be required to be made into the such Reserve Accounts whenever and as long as the amounts deposited therein shall be equal to the respective Reserve Requirement.

(E) The City shall next, each month after all payments required above have been made, transfer the balance remaining in the Revenue Fund to the Repair, Maintenance and Operation Fund. All funds in the Repair, Maintenance and Operation Fund shall be kept apart from all other funds of the City or of the Depository Bank and shall be invested and reinvested in as provided in the Ordinance. Withdrawals and disbursements may be made from the Repair, Maintenance and Operation Fund as provided in Section 3.04 of the Ordinance.

(F) Moneys in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall be come due. Moneys in the Series 2005 A Bonds Reserve Account and the Series 2005 B Bonds Reserve Account shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall come due, when other moneys in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund are insufficient therefor, and for no other purpose, except for permitted transfers to the respective Rebate Fund.

**Rate Covenant**

The City will fix, establish and maintain such rates and collect such fees, rentals or other charges for the services and facilities of the Parking System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year at least sufficient to pay, one hundred fifteen per centum (115%) of the largest amount of principal and interest maturing and becoming due on the Bonds then Outstanding in any succeeding fiscal year, in addition to paying, as the same shall become due, the necessary expense of repair (including replacement), maintenance and operation of the Parking System in each fiscal year, and all obligations or indebtedness other than the Bonds payable out of revenues of the Parking System in such fiscal year, and that such rates, fees, rentals or other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

## THE PARKING SYSTEM

The Parking System consists of 6 parking garages that contain 3,474 parking spaces. Of the spaces available in the garages, 1,827 are rented to the general public on a monthly basis. The City Parking System also has 1,050 metered parking spaces in its garages and on the streets. The Parking System also includes 7 parking lots, leased from the State of West Virginia, that contain 730 parking spaces. The lots are used for special events parking. The Parking System will acquire two (2) additional parking lots, containing a total of two hundred twenty-eight (228) parking spaces, in the vicinity of a new baseball stadium currently under construction.

The monthly parking charge ranges from $60.00 - $70.00, with some reduced rates available at certain garages for certain users. The charges for on-street metered parking spaces vary based upon length of term and location of parking space. The fines for overtime parking and other parking violations are as follows: For overtime parking, the fine is $5.00 if paid within 24 hours and $25.00 if paid thereafter; for parking illegally in a handicapped zone, the fine is $75.00; and for all other non-moving violations, the amount of any fine varies.

Under the Act, the responsibility for the operation and maintenance of the Parking System is given to the City, and the City is empowered to delegate such responsibility to a board. Pursuant to such authority, the City Council appointed a special committee designated the Parking Facilities Committee, being composed of the Mayor, City Manager and the Finance Committee of City Council. The Parking Facilities Committee promulgates rules and regulations governing the usage

of all the parking facilities. The Parking System staff has the responsibility of collecting, receiving and depositing funds received from the operation of the Parking System.

Mr. Gary Taylor, the Parking Director, oversees the daily operations of the Parking System. He oversees the rental of spaces, collects monthly rentals and answers parking complaints. He has served in this position since July 2004.

In addition to parking lots and metered spaces of the Parking System, there are other parking facilities built and operated in conjunction with the Town Center Mall, banks and/or office buildings, the Kanawha County Commission and hotels. These facilities, although primarily for their respective tenants and customers, provide some public parking spaces. There are also privately operated surface lots which may be utilized by the general public. The City believes that it provides parking facilities and services at prices competitive with those of other providers of parking facilities.

## FINANCIAL OPERATIONS

The accounts of the Parking System are maintained as a part of the general accounts of the City and are maintained in accordance with generally accepted accounting principals. The Office of the State Auditor of the State of West Virginia, Charleston, West Virginia, has audited the financial statements of the City for the year ended June 30, 2003. See APPENDIX C - Audited Financial Statements of City of Charleston. THE FINANCIAL STATEMENTS CONTAINED IN APPENDIX C ARE THE "AUDIT REPORT OF CITY OF CHARLESTON, WEST VIRGINIA FOR THE FISCAL YEAR ENDED JUNE 30, 2003".

### Operating Results

The following table is a summary of the operations of the Parking System for the fiscal year ended June 30, 2003. This summary has been complied from the respective audited financial statements and internal financial records for fiscal year ended June 30, 2003 but does not purport to present such data in accordance with generally accepted accounting principles.

## Parking System Operating Results Fiscal Year Ended June 30

| | Audited 2002 | Audited 2003 | Unaudited 2004 | Projections 2005 | |
|---|---|---|---|---|---|
| Operating Revenues | | | | | |
| Parking Revenues | 3,105,327 | 2,727,030 | 2,291,087 | 2,306,100 | |
| Other | 4,869 | 16,472 | 1,288,908 | 1,297,000 | |
| Total Operating Revenues | 3,110,196 | 2,743,502 | 3,579,995 | 3,603,100 | |
| Operating Expenses | | | | | |
| Personnel Costs | 1,444,653 | 1,009,614 | 1,025,735 | 1,060,291 | |
| Contractual Services | 0 | 459,972 | 527,404 | 532,950 | |
| Commodities | 0 | 54,559 | 56,917 | 55,000 | |
| Depreciation | 995,489 | 973,114 | 896,134 | 874,000 | |
| Total Operating Expenses | 2,440,142 | 2,497,259 | 2,506,190 | 2,522,241 | |
| Non Operating Revenues (Expenses) | | | | | |
| Interest | 122,651 | 22,463 | 14,331 | 18,000 | |
| Interest on MBC Deposits | 0 | 81,771 | 24,569 | 64,000 | |
| Gain on Sale of Fixed Assets | 0 | (2,947) | 125 | 0 | |
| Other Interest | 0 | 3,192 | (1,463) | (3,000) | |
| Interest on Bonds | (1,098,529) | (995,101) | (914,727) | (880,036) | |
| Bond Debt Service Charge | 0 | (105,301) | (99,829) | (100,000) | |
| Bad Debt | 0 | 285 | (60) | (600) | |
| Contingency | 0 | 0 | 0 | (50,158) | |
| Total Non Operating Revenues (Expenses) | (975,878) | (995,638) | (977,054) | (951,794) | |
| Net Income | (305,824) | (749,395) | 96,751 | 129,065 | |
| Plus: | | | | | |
| Depreciation | 995,489 | 973,114 | 896,134 | 874,000 | |
| Interest on Bonds | 1,098,529 | 995,101 | 914,727 | 880,036 | |
| Bond Debt Service Charge | 0 | 105,301 | 99,829 | 100,000 | |
| Revenues Available for Debt Service | 1,788,194 | 1,324,121 | 2,007,441 | 1,983,101 | |
| Debt Service on Bonds | 1,589,486 | 1,583,628 | 1,585,265 | | |
| Debt Service on Series 2005A Bonds | | | | 935,610 | * |
| Debt Service on Series 2005 BANS & 2005B Bonds | | | | 428,584 | |
| Coverage | 1.13 | 0.84 | 1.27 | 1.45 | |

* Proposed new debt service.

*Source: City of Charleston Audits and Internal Financial Records*

THE PROJECTIONS INCLUDED UNDER OPERATING RESULTS HAVE BEEN PREPARED BY THE CITY OF CHARLESTON AND SHOULD NOT BE RELIED UPON OR CONSTRUED AS STATEMENTS OF FACT. SOME ASSUMPTIONS INEVITABLY WILL NOT MATERIALIZE AND UNANTICIPATED EVENTS AND CIRCUMSTANCES MAY OCCUR; THEREFORE, THE ACTUAL RESULTS ACHIEVED DURING THE PERIODS FOR WHICH THE PROJECTIONS HAVE BEEN PROVIDED WILL VARY FROM THE PROJECTIONS, AND SUCH VARIATIONS MAY OR MAY NOT BE MATERIAL.

**Parking System Budget and Expenditures**

An operating budget is prepared annually by the City's Finance Director and is approved by the City's Parking Committee prior to the beginning of each new fiscal year. The operating budget is then compared to actual year-to-date revenues and expenditures on a monthly basis. The actual operating results for the Parking System through June 30, 2003, are set forth on page C-18 of Appendix C.

## BANKRUPTCY

The United States Bankruptcy Code permits political subdivisions that are insolvent or unable to meet their debts to file a petition for relief in federal bankruptcy courts if authorized by state law. Bankruptcy proceedings by the City could have additional adverse effects on Bondholders, including (a) delay in the enforcement of Bondholders' remedies, (b) subordination of the Bondholders' liens to claims of those supplying goods and services to the City after the initiation of bankruptcy proceedings and to the administrative expenses of bankruptcy proceedings and (c) imposition without the consent of all Bondholders of a reorganization plan reducing or delaying payment of the Bonds. The Bankruptcy Code contains provisions intended to insure that, in any reorganization plan not accepted by the holders of at least a majority in aggregate principal amount of the Bonds, Bondholders will have the benefit of their original lien or the "indubitable equivalent." The effect of these and other new provisions of the Bankruptcy Code cannot be predicted with any certainty and may be significantly affected by judicial interpretation.

## LITIGATION

There are no actions, suits, proceedings, inquiries or investigations at law or in equity before or by any court, public board or body, now pending or, to the best knowledge of the City, threatened or affecting the City (or, to the City's knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the validity of the Bonds, the Bond Ordinance, the Supplemental Resolution or any agreements to which the City is a party and which are a result of the issuance of the Bonds.

## NEGOTIABLE INSTRUMENTS

Pursuant to state law, the Bonds are and have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia.

## FINANCIAL STATEMENTS

Included in APPENDIX C are the audited financial statements of the City as of and for the year ended June 30, 2003, and the report with respect to the audited financial statements as of June 30, 2003, dated February 5, 2004, of the Office of the State Auditor of the State of West Virginia.

## TAX EXEMPTION

### Opinion of Bond Counsel

Bond Counsel is of the opinion that under existing statutes and court decisions of the United States of America, as currently written and applied, the interest on the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, will be excludable from the gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). In addition, such interest will not be treated as a preference item in calculating the alternative minimum tax that may be imposed with respect to individuals and corporations. Under the Code, however, interest on the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, is included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax that may be imposed with respect to corporations. Bond Counsel is of the further opinion that, under the Act, the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, and the interest thereon are exempt from direct taxation by the State of West Virginia and by any county, municipality, political subdivision or agency thereof. In its approving opinions, Bond Counsel expresses no opinion regarding other tax consequences arising with respect to the bonds.

The Code establishes certain requirements that must be met subsequent to the issuance and delivery of the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, in order that interest on the Bonds be and remain excludable from gross income under Section 103 of the Code. These requirements include, but are not limited to, requirements relating to the use, investment and expenditure of bond proceeds and the requirements that certain earnings be rebated to the federal government. The City has covenanted to comply with certain provisions and procedures, pursuant to which such requirements can be satisfied. Noncompliance with such requirements may cause interest on the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, to become includable in gross income for federal income tax purposes retroactive to the date of issuance thereof, irrespective of the date on which such noncompliance is ascertained.

## UNDERWRITING

Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (collectively, the "Underwriters") have agreed, subject to certain conditions, to purchase the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, from the City at an aggregate discount from the initial public offering prices set forth on the cover page of this Official Statement. The obligation of the Underwriters to purchase the Bonds is subject to certain terms and conditions set forth in the purchase contract entered into between the Underwriters and the City. The Bonds may be offered and sold to certain dealers, banks and others at prices lower than the initial offering prices, and such initial public offering prices may be changed, from time to time, by the Underwriters.

## VERIFICATION OF MATHEMATICAL COMPUTATIONS

Smith, Cochran & Hicks, P.L.L.C., independent certified public accountants, will (a) verify the mathematical accuracy of the arithmetical computation of the cash flow provided by the Escrow Fund and (b) verify that the cash deposited into the Escrow Fund is adequate to refund and defease the 1993 Bonds on March 14, 2005. Such verifications will be based upon information supplied to Smith, Cochran & Hicks, P.L.L.C. by the Underwriters.

## LEGAL MATTERS

Legal matters incident to the authorization and issuance of the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, by the City are subject to the approval of Jackson Kelly PLLC, Charleston, West Virginia, Bond Counsel. The proposed form of Bond Counsel's opinion is appended hereto as APPENDIX D.

Certain legal matters will be passed upon for the City by Steptoe & Johnson, PLLC, Charleston, West Virginia, and for the Underwriters by Goodwin & Goodwin, LLP, Charleston, West Virginia.

## CONTINUING DISCLOSURE

The City has agreed to an undertaking for the benefit of the Registered Owners of the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, to provide certain financial and operating information (the "Annual Information") not later than one hundred eighty (180) days following the end of the fiscal year of the City (currently June 30), commencing in 2005, and to provide the Annual Information to the Central Post Office, as defined in the Continuing Disclosure Certificate delivered by the City at closing, for delivery to each National Recognized Municipal Securities Information Repository ("National Repository") and any State Information Depository ("State Depository") and to provide notice of the occurrence of the enumerated events to the Central Post Office for delivery to each National Repository or the Municipal Securities Rulemaking Board ("MSRB") and to any State Depository. This obligation shall be evidenced by the Continuing Disclosure Certificate from the City, the form of which is attached hereto as Appendix E.

The Annual Information will consist generally of information of the type contained herein in Appendix C of the Official Statement. Any of the foregoing information may be supplied by including by specific reference information previously supplied to the Central Post Office for delivery to each National Repository and any State Depository or the Securities and Exchange Commission ("SEC"). Information will not be included by reference from any final official statement unless such final official statement is available from the MSRB.

This continuing disclosure obligation is being undertaken by the City to assist the Underwriter in complying with Rule 15c-12 promulgated by the SEC. The City has agreed to give notice in a timely manner to the Central Post Office for delivery to each National Repository, or the MSRB, and to each State Depository of any failure to supply the requested information.

However, any such failure will not constitute a default under the terms of the Bonds. Registered Owners may contact the City Manager of the City at P.O. Box 2749, Charleston, WV 25330 (304) 348-8014 for more information.

For the fiscal years ended June 30, 2001, 2002 and 2003, the City failed to provide the Annual Information to each National Repository. The problem occurred primarily because the disclosure responsibility was not specifically assigned to any individual or department after the City's 2001 bond issue. The problem was corrected on or about December 1, 2004, when the Annual Information was provided to each National Repository and to the Central Post Office. The City has taken steps to avoid a recurrence of the problem by assigning the task to the City Auditor's office.

## MISCELLANEOUS

So far as any statements made in this Official Statement involve matters of opinion or estimates, whether or not expressly stated, they are set forth as such and not as representations of fact, and no representation is made that any of such statements will be realized. Neither this Official Statement nor any statement which may have been made orally or in writing is to be construed as a contract with the Owners of the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds,.

Copies of the Ordinance, the Supplemental Resolution and other applicable documents may be obtained from the City at the following address or telephone number:

The City of Charleston
P.O. Box 2749
Charleston, WV 25330
Attention: City Manager
(304) 348-8014

or, during the period of offering the Series 2005 Notes and, when, as and if issued, the Series 2005 B Bonds, from the Underwriter. Ongoing financial information concerning the City and the Parking System may be obtained from the above-referenced source.

The execution and distribution of this Official Statement has been duly authorized by The City of Charleston.

THE CITY OF CHARLESTON, WEST VIRGINIA

By /s/ Danny Jones
Mayor

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APPENDIX A

The City of Charleston

## Introduction

Charleston, the county seat of Kanawha County, was originally chartered in 1794 as Charles Town and changed to the present name in 1819. The city was named by George Clendenin, one of the earliest settlers, for his father, Charles Clendenin. As the capital and largest city of West Virginia, it is located in the west central part of the state, at the confluence of the Elk River and the Kanawha River. Charleston is a commercial manufacturing and distribution center for the surrounding coal, petroleum, natural gas, and metal products industries.

West Virginia is centrally located in the South Atlantic Region of the United States, bound to the North by Pennsylvania and Maryland, to the East and South by Virginia, and to the West by Kentucky and Ohio.

## Charleston History

Charleston was officially established on December 19, 1794. There were 35 people living in town at that time. The area began to grow around 1800 when salt brine deposits were found along the Kanawha River. West Virginia was officially declared a state by President Abraham Lincoln on June 20, 1863. By the end of the Civil War, the fledgling government was being formed and struggling to come together effectively. The state capital wasn't set, moving between Charleston and Wheeling until 1885.

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Source: Key to the City: usacitiesonline.com

**Population Overview**
**2000 Census**

| | Charleston | WV | US |
|---|---|---|---|
| Total population | 53,421 | 1,810,354 | 290,809,777 |
| Square miles (land) | 31.60 | 24,078 | 3,537,438 |
| Population per sq. mile | 1,690.37 | 75.10 | 79.56 |
| **Gender** | | | |
| Male | 46.6% | 48.6% | 49.1% |
| Female | 53.4% | 51.4% | 50.9% |
| **Age** | | | |
| 15 or younger | 17.2% | 18.2% | 21.4% |
| 16-24 | 11.9% | 13.6% | 13.9% |
| 25-44 | 27.9% | 27.7% | 30.2% |
| 45-64 | 25.3% | 25.2% | 22.0% |

| | | | |
|---|---|---|---|
| 65+ | 17.6% | 15.3% | 12.4% |
| Average age (years) | 40.59 | 39.01 | 36.22 |

**Race & Ethnicity**

| | Charleston | Chas. | WV | US |
|---|---|---|---|---|
| White | 43,072 | 80.6% | 95.0% | 75.1% |
| Black or African American | 8,048 | 15.1% | 3.2% | 12.3% |
| American Indian & Alaska native | 127 | 0.2% | 0.2% | 0.9% |
| Asian | 979 | 1.8% | 0.5% | 3.6% |
| Native Hawaiian & other Pacific Islander | 16 | 0.0% | 0.0% | 0.1% |
| Some other race | 158 | 0.3% | 0.2% | 5.5% |
| Two or more races | 1,021 | 1.9% | 0.9% | 2.4% |
| Hispanic or Latino | 432 | 0.8% | 0.7% | 12.5% |

Sources: US Census Bureau, 2000 Census; ePodunk

**Healthcare**

Charleston is home to the 78th largest community health care system, including the nation's second largest cardiac care program, a Level I trauma center and a women and children's hospital. Regional patient capacity exceeds 1,600 beds encompassing four general acute care hospitals, two specialty hospitals and numerous clinics. The Charleston area enjoys a reputation as a leader in start-of-the-art health care facilities and specialties.

The area has become a major center of specialized care and advanced medical training, providing complete health services in modern well-equipped institutions. Charleston is home to the State's largest hospital complex, the Charleston Area Medical Center, with approximately 962 beds. It is the home of the Charleston Division of the West Virginia University School of Medicine. In addition, there are other hospitals operating in the area with approximately 530 licensed beds at Thomas Memorial Hospital and St. Francis Hospital.

Charleston Area Medical Center- Memorial Division, Specializes in Cardiac and Cancer diagnosis and treatment.

Charleston Area Medical Center- General Division, Level 1 Trauma Center, Neuroscience, Medical Rehabilitation Center, Behavioral Medicine, Psychiatry, Physical and Occupational Therapy, Transitional Care, Orthopedics. This hospital is one of only 2 kidney transplant centers in West Virginia and has the State's only accredited sleep center.

Women's & Children's Hospital, Specializes in Pediatrics, Obstetric & Gynecology.

Thomas Memorial Hospital, A full service facility offering inpatient, outpatient and emergency care. Also includes: Heart Center, the Cancer Center of Southern West Virginia with a patient support system; Diabetes Center, clinics and medical-surgical inpatient services.

St. Francis Hospital, a full service facility offering inpatient, outpatient and emergency care. This facility also offers a comprehensive program for treating lung disease and a sports medicine program.

**Utilities and Services**

One of the nation's largest investor-owned utility holding companies, American Electric Power, provides low-cost electricity to the Charleston area. Rates are lower than the national average because of AEP's highly efficient power plants, high voltage transmission systems, and easy access to West Virginia's coal supply.

A mix of corporate entities and public utilities provide water, natural gas, and electricity. Allegheny Power provides natural gas service in various parts of the State. West Virginia-American Water Company provides water service to most residents of Kanawha County. WVAWC is the State's largest water supplier with 40-MGD of production capacity.

**Employment**

The world's leading companies find Charleston the perfect fit for teamwork, innovation and productivity. Strategic proximity to markets, coupled with an extensive transportation network, provide the access vitally important to domestic and global commerce. Public and private sectors cooperate seamlessly to help companies achieve success. A reliable and well-trained workforce gives businesses the competitive edge needed in today's global economy.

The Charleston region has enjoyed steady economic growth with total employment increasing 21% over the past decade. Unemployment in the Charleston MSA closely mirrors the national average, ranging from a low of 3.9% to a high of 5.0% with an average of 4.7% in recent years.

Source: BIDCO

**Labor Force Statistics – Kanawha County**

| | *1999* | *2000* | *2001* | *2002* | *2003* |
|---|---|---|---|---|---|
| Civilian Labor Force | 107,450 | 107,190 | 108,190 | 104,260 | 100,690 |
| Total Employment | 102,370 | 102,890 | 104,010 | 99,150 | 95,810 |
| Total Unemployment | 5,080 | 4,500 | 4,180 | 5,110 | 4,880 |
| Unemployment Rate | 4.7% | 4.2% | 3.9% | 4.9% | 4.8% |

Source: BIDCO

## Leading Employers

Major industries in the Charleston region include healthcare, services, government, chemicals, education and components manufacturing. There are more than 6,000 businesses in Kanawha County – representing more employment opportunities than any other county in West Virginia. New and expanding businesses benefit from assistance programs at both the State and local levels.

The region's largest employers in 2003:

| | |
|---|---|
| State Government | 12,400 |
| Charleston Area Medical Center (Healthcare) | 5,000 |
| Kanawha County Schools (Education) | 5,000 |
| Federal Government | 2,700 |
| Verizon West Virginia (Telecommunications) | 1,500 |
| City of Charleston | 850 |
| Accordia of West Virginia (Insurance Services) | 800 |
| Columbia Natural Resources | 700 |
| CASCI (Insurance services) | 650 |
| BB&T (Banking) | 600 |
| Ticketmaster (Ticket sales center) | 600 |

Source: BIDCO

## Transportation

Residents of Charleston have immediate access to a full range of transportation services – highway, air, rail and water. It is a feature that gives the Charleston area an edge for attracting new businesses to the region.

The convergence of three interstate highways, I-64, I-77, and I-79 interconnecting Charleston as well as Appalachian Corridor "G" (US Rt. 119) brings the area within overnight road-travel distance of 60% of the nation's principal industrial and commercial markets. Charleston is one of 13 cities in the nation where three interstate highways converge. East-West I-64 extends from Norfolk, Virginia to St. Louis, Missouri; North-South I-77 from Cleveland Ohio to Columbia, South Carolina; northeast-southwest I-79 from Erie, Pennsylvania to Charleston, extending to Pikeville, Kentucky via US Rt. 119. In addition to the superhighways, three national and several state highways presently serve the SMSA.

Over 40 motor freight companies operate in the Kanawha Valley, of which over 20 maintain terminals, making the area one of the major trucking centers in the Eastern United States. The nation's eight largest motor freight companies are among those with terminals in Charleston. Charleston is the most direct route from the Upper Midwest to the Southeast and serves as a logical transfer point for shipments.

The Greyhound Bus Lines offers interstate and intrastate services, with both freight and passenger capacity.

Local bus service is furnished by the Kanawha Regional Transportation Authority. It operates a 60+ fleet bus system throughout the Kanawha Valley. The system, commonly know as the KRT, serves approximately 20 routes covering nearly 200 miles. Service is provided 7 days a week from 4:00 a.m. to 1 a.m.

Yeager Airport accommodates commercial, general aviation and military air traffic. Major improvements to the airport have been made in the last few years, including terminal remodeling, additional parking, and a building within the airport complex to house FAA offices and the National Weather Service. Charter air service and cargo air services are available from several companies at the airport. In July of 2004, Yeager Airport announced the arrival of Independence Air, the nations newest low fare carrier to the Charleston area. Charleston was officially designated a "port of entry" by the United States Customs in 1973.

Three major rail companies within the region: Norfolk Southern, CSX Transportation and Amtrak.

**Government**

Charleston City Council represents the interests of their constituents by responding to inquiries, suggestions and complaints regarding City programs and services. They govern through legislative, administrative, and financial powers and have the ability to levy taxes, enact ordinances and resolutions, and exercise budgetary and policy control over city departments.

The 27 Council Members are elected by ward for four-year terms with 21 members representing various wards as determined by ward boundaries and 6 At-Large members serving the entire City. Council has both Majority and Minority Leaders, who are selected by their respective parties during party caucuses. The President Pro-Tempore is elected by the entire City Council.

Kanawha County is governed by, and generally acts through, the County Commission of Kanawha County. The present Commissioners, elected on a countywide basis, are W. Kent Carper, President, Henry C. Shores and David J. Hardy. The County Commission exists and operates pursuant to the authority given to it under Article 1 of Chapter 7 of the Code of West Virginia of 1931, as amended. The County Commission is located in Charleston.

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Source: City of Charleston

**Communications**

Charleston has two main newspapers, *The Charleston Gazette* and *Charleston Daily Mail.* TV Stations include WCHS/WVAH, WOWK, WSAZ and WPBY that broadcast throughout the county. Sixteen radio stations serve the Charleston area on both AM/FM frequencies.

## Housing

While home styles vary from comfortable country farmhouse to a stylish hillside contemporary, value is consistent. The median sale price in Charleston, according to the Coldwell Bank Home Price Comparison Index, 2001, (Based on 2,200 sq. ft., 4 bedrooms, 2.5 baths, family room, 2-car garage) is $180,475. Competitive home prices, combined with property taxes that are among the lowest in the nation, mean "more house for less money."

## Cost of Living

Charleston is an affordable city with countless amenities that make it one of the most desirable places in the East to work and play.

The most recent ACCRA cost of living composite index for Charleston is 88.8 versus the nationwide benchmark of 100.0 (first quarter 2004).

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Source: BIDCO

## Cultural/Arts

Performing arts include West Virginia Symphony Orchestra, Charleston Light Opera Guild, Kanawha Players, Children's Theater of Charleston and the Charleston Ballet. Mountain Stage is broadcast nationwide from Charleston each Sunday.

The Clay Center for the Arts and Sciences houses a science museum, art museum, planetarium and a concert hall.

## Economic Statistics

*Economic Indicators for Kanawha County*

| | |
|---|---|
| Per Capita Income (2002) * | $31,821 |
| Total Personal Income (2002) | $6,233,145 |

* Thousands of dollars

*Employment and Wages Covered by Unemployment Compensation Programs*

| | |
|---|---|
| Employment, Annual Average 2000 | 113,019 |
| Total Wages, Annual 2000 | $3,408,180,576 |
| Annual Wage, Annual Average 2000 | $30,155 |
| Weekly Wage, Annual Average 2000 | $579.92 |

Source: Bureau of Employment Programs

**Nearby Metropolitan Cities Distance (miles)**

| | |
|---|---|
| Huntington, WV | 53 |
| Parkersburg, WV | 79 |
| Columbus, OH | 212 |
| Pittsburgh, PA | 227 |

**Climate**

Temperature Mean Annual Average: 55 degrees

| | | |
|---|---|---|
| January Averages: | *High* 41 | *Low* 23 |
| July Averages: | *High* 86 | *Low* 64 |

Long Term Precipitation (inches)

| | |
|---|---|
| Annual: | 42.5 |
| January | 2.91 |
| July: | 4.99 |

Mean Annual Snowfall Range (inches): 25-40

Source: Bureau of Employment Security of WV

**Recreation**

Charleston is at the center of recreational activity for the eastern United States. From boating on the beautiful Kanawha River to riding the wildest whitewater...from golfing the most challenging, picturesque courses to enjoying music of the world...all can be found right here.

When it's time to leave the workplace, Charlestonians travel ten minutes to Kanawha State Forest for hiking, walking, biking, camping, swimming and horseback riding. It's just one of thirteen public parks and campgrounds located within the region.

Whether you want to go boating, take a stroll, or rollerblade, head to Magic Island or Haddad Riverfront Park for riverside fun. Local marinas and boat clubs provide river access and amenities to local boaters and water lovers.

Snowshoe Resort, Winterplace and Canaan Valley Resort offer the finest downhill skiing in the Southeast. All are a convenient day trip from Charleston.

Source: BIDCO

**Colleges & Universities**

Local colleges and universities are progressive partners with industry, providing customized training, research support and advanced degree programs. The Charleston region is focused on attracting world-class talent to support an expanding base of highly technical domestic and international companies.

Five fully accredited colleges and universities serve the Charleston region offering quality undergraduate and graduate degree programs. These institutions maintain a total enrollment in excess of 29,000 students.

**Marshall University**
**Southern WV Community College**
**University of Charleston**
**WV State University**
**WVU Institute of Technology**

Additionally, superior vocational schools and an adult career centers offer nearly forty programs of study.

Source: BIDCO

APPENDIX B

Summary of Certain Provisions of the Bond Ordinance

The Notes and Series 2005 B Bonds are issued under an Ordinance, as defined below. The following is a summary of certain terms, provisions and covenants of the Bond Ordinance. This summary makes use of terms defined in the Prior Ordinances and Bond Ordinance, certain of which are defined in "Definitions" which follows. This summary is not to be considered a full statement of the terms of the Prior Ordinances or the Bond Ordinance, and, accordingly, is qualified by reference thereto and is subject to the full text thereof. Until the Series 2005 A Bonds are issued, the Prior Ordinance and its covenants remains in effect. Certain covenants and requirements of the Prior Ordinance are more restrictive than the Ordinance. Upon the issuance of the Series 2005 A Bonds, the Prior Ordinance will be released and discharged.

Definitions

"Act" shall mean Chapter 8, Article 12, Chapter 8, Article 16, and Chapter 13, Article 2E, of the Code of West Virginia, 1931, as amended.

"Authorized Officer" shall mean the Mayor of the City or any other officer of the City specifically designated by resolution of the City Council.

"Bondholder" or "Owner of the Bonds" or "Registered Owner" or any similar term shall mean any person who shall be the registered owner of any Outstanding fully registered Bond.

"Bond Register" shall mean the books of the City maintained by the Registrar for the registration and transfer of the Bonds.

"Bonds" shall mean, collectively, the Parking System Refunding Revenue Bonds, Series 2005 A and 2005 B and any parity additional Bonds issued within the terms, restrictions and conditions contained in the Ordinance.

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

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Certificate of Authentication and Registration" shall mean the Certificate of Authentication and Registration on the Series 2005 A Bonds and Series 2005 B Bonds.

"City" shall mean The City of Charleston, a municipal corporation of the State of West Virginia, and, where appropriate, the City Council.

"City Clerk" shall mean the Clerk of the City.

"City Council" shall mean the Council of the City or any other governing body of the City that succeeds to the functions of the City Council as presently constituted.

"Closing Date" shall mean respectively, the dates upon which there is an exchange of the Note or Series 2005 A Bonds for the proceeds representing the original purchase price thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations issued pursuant thereof.

"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.

"Committee" or "Parking Facilities Committee" shall mean the committee composed of the Mayor and other members of the City Council.

"Conversion Date" shall mean the date upon which the Note is converted to the Series 2005 B Bonds.

"Cost of Issuance Fund" shall mean the funds established for the Note and the Series 2005 A Bonds.

"Costs" or similar terms shall mean all those costs now or hereafter permitted by the Act to be financed with bonds issued pursuant to the Ordinance, including, without limitation, the costs of refunding the Prior Bonds, interest accruing or to accrue thereon, redemption premiums, premiums for municipal bond insurance and reserve account insurance, letter of credit fees, expenses for fiscal or other agents, legal expenses and any other costs or expenses necessary, incidental, desirable or appurtenant to the issuance of the Notes, the Series 2005 Bonds and the refunding of the Prior Bonds.

"Depository Bank" shall mean the bank designated in a resolution supplemental to the Ordinance as eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC and any successor thereto.

"DTC" shall mean The Depository Trust Company, New York, New York.

"DTC Eligible" shall mean bonds meeting the qualifications, prescribed by The Depository Trust Company, New York, New York.

"Escrow Agent" shall mean the Escrow Agent with respect to each Escrow Agreement.

"Escrow Agreement" shall mean the agreements between the City and the Escrow Agent, relating to the refunding and defeasance of the Prior Bonds.

"Escrow Fund" shall mean the escrow fund created by each Escrow Agreement.

"Event of Default" shall mean any occurrence or events specified in the Ordinance.

"FDIC" shall mean the Federal Deposit Insurance Corporation or any successor to the function of the FDIC.

"Fiscal Year" shall mean each twelve month period beginning on July 1 and ending on the succeeding June 30.

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

"Gross Revenues" shall mean all rates, rents, fees, charges or other income received by or accrued to the Parking Facilities Committee from the operation of the Parking System, as calculated in accordance with generally accepted accounting principles.

"Independent Accountants" shall mean any certified public accountant or firm of certified public accountants which shall be retained by the City as independent accountants for the Parking System.

"Mayor" shall mean the Mayor of the City.

"Net Proceeds" shall mean the face amount of the Bonds, plus accrued interest or premium, if any, less Original Issue Discount, if any, and less proceeds deposited in the Reserve Account, if any.

"Net Revenues" shall mean Gross Revenues less Operating Expenses.

"Nonpurpose Investment" shall mean any investment property which is acquired with the gross proceeds or any other proceeds of the Series 2005 Bonds and is not acquired in order to carry out the governmental purpose of the Series 2005 Bonds.

"Note" shall mean the Parking System Bond Anticipation Note originally authorized to be issued pursuant to the Ordinance.

"Note Repayment Account" shall mean the account established pursuant to the Ordinance.

"Note Reserve Account" shall mean the account established pursuant to the Ordinance.

"Off-Street Parking Facilities" shall mean the parking lots, parking building or other structures, motor vehicle ramps within and leading to and from such buildings and structures, parking meters or other equipment, machinery or devices for obtaining revenue from public parking or motor vehicles, entrances, exits, fencing and all other facilities, equipment and accessories necessary or desirable for public parking of vehicles, for which fees or other charges are fixed, established and collected, pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities leading to or from such parking lots, parking buildings and other structures, and buildings, structures and facilities acquired or constructed by the City for lease or (prior to the sale thereof) sale for commercial, business or charitable use on, in or under such parking lots, parking buildings and structures, and all properties, real personal, tangible or intangible, used 'in connection therewith, now owned, operated or controlled by the City, or hereafter constructed or acquired by said City from any source whatsoever, within the City, provided, that Off-Street Parking Facilities do not include property owned by the City where municipal owned vehicles are parked or stored while being used in the performance of municipal functions.

"On-Street Parking Facilities" shall mean places on or in the streets of the City and parking meters or other equipment, machinery or devices installed, located or existing at or near the curbs of the streets adjacent to such places for collecting revenues from public parking of vehicles in such places, for which fees or other charges are fixed, established or collected, and all such facilities hereafter located, constructed or acquired by said City from any sources whatsoever for which fees or other charges are fixed, established or collected.

"Operating Expenses" unless qualified, shall mean the current expenses, paid or accrued, for repair, operation and maintenance of the Parking System (excluding depreciation and interest and principal of the Bond and Note indebtedness) and includes, without limiting the generality of the foregoing, supplies, labor, wages, the cost of materials and supplies used for current operations, administrative expenses of the City or the Parking Facilities Committee relating and chargeable to the Parking System and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles.

"Outstanding" when used with reference to Notes or Bonds and as of any particular date, describes all Notes or Bonds theretofore and thereupon being issued and delivered except (a) any Note or Bond cancelled by the Registrar for such Note or Bond at or prior to said date; (b) any Note or Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under the Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Note or Bond deemed to have been paid as provided by the Ordinance; and (d) with respect to determining the number or

percentage of Bondholders or Notes or Bonds for the purpose of consents, notices and the like, any Note or Bond registered to the City.

"Parking System" shall mean all Off-Street Parking Facilities and On-Street Parking Facilities.

"Participant" shall mean the person or entity registered as such with DTC.

"Paying Agent" shall mean any paying agent for the Notes or Bonds appointed by a resolution supplemental to the Ordinance.

"Prior Bonds" shall mean the City's Parking System Refunding Revenue Bonds, Series 1993, dated June 1, 1993, issued in the original principal amount of $5,235,000 and currently outstanding in the principal amount of $3,000,000 (the "Series 1993 Bonds"), Parking System Revenue Bonds, Series 1994 A, dated December 15, 1994, issued in the original principal amount of $4,545,000, and currently outstanding in the principal amount of $3,720,000, Parking System Subordinate Revenue Bonds, Series 1994 B, dated December 15, 1994, issued in the original principal amount of $5,455,000, and currently outstanding in the principal amount of $4,035,000 and Parking System Subordinate Revenue Bonds, Series 1995, dated January 1, 1995, issued in the original principal amount of $1,620,000, and currently outstanding in the principal amount of $1,195,000 (collectively, the "Series 1994 and Series 1995 Bonds").

"Prior Bonds Redemption Date" shall mean the dates established by a resolution supplemental to the Ordinance for the redemption of each series of Prior Bonds.

"Prior Ordinances" shall mean collectively the following ordinances passed by the City Council, as amended and supplemented thereafter:

(a) An ordinance dated May 17, 1993, supplementing the Original Ordinance authorizing the issuance of the $5,235,000 Parking System Refunding Revenue Bonds, dated June 1, 1993; and

(b) An ordinance dated December 5, 1994, supplementing the Original Ordinance authorizing the issuance of the $4,545,000 Parking System Revenue Bonds and of the $5,455,000 Parking System Subordinate Revenue Bonds, dated December 15, 1994, and the issuance of the $1,620,000 Parking System Subordinate Revenue Bonds, dated January 1, 1995.

"Private Business Use" shall mean use directly or indirectly in any trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Purchase Price," for the purpose of computation of the Yield of the Series 2005 Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 2005 Bonds to the public (not

including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Series 2005 Bonds of each maturity is sold or, if the Series 2005 Bonds are privately placed, the price paid by the first buyer of the Series 2005 Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 2005 Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 2005 Bonds.

"Purchaser" or "Original Purchaser" shall mean with respect to the Notes and the Bonds collectively, Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated, Charleston, West Virginia.

"Qualified Investments" shall mean and includes any of the following, unless otherwise set forth in the Supplemental Resolution:

(a) Government Obligations;

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

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

(h) The West Virginia " consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6 of the Code of West Virginia, 1931, as amended; and

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

"Record Date" shall mean the day of the month which shall be so stated in the Bonds, regardless of whether such day is a Saturday, Sunday or other legal holiday.

"Redemption Price" shall mean such amount(s) as is established in a resolution to the Ordinance.

"Registrar" shall mean the bank to be designated as the registrar for the Notes and Series 2005 Bonds, and any successor thereto.

"Regulations" shall mean temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1986, as amended.

"Repair, Operation and Maintenance Fund" shall mean the account created by the Ordinance.

"Representation Letter" shall mean the Letter Agreement among the City, DTC and the Paying Agent.

"Revenue Fund" shall mean the fund created by the Ordinance.

"Series 2005 Bonds" shall mean collectively the Parking System Refunding Revenue Bonds, Series 2005 A and Series 2005 B, of the City originally authorized to be issued pursuant to the Ordinance.

"Series 2005 A Bonds" shall mean the Parking System Refunding Revenue Bonds, Series 2005 A.

"Series 2005 A Bonds Rebate Fund" shall mean the Series 2005 A Bonds Rebate Fund created by the Ordinance.

"Series 2005 A Bonds Redemption Account" shall mean the Series 2005 A Bonds Redemption Account created by the Ordinance.

"Series 2005 A Bonds Reserve Account" shall mean the Series 2005 A Bonds Reserve Account created by the Ordinance.

"Series 2005 A Bonds Reserve Requirement" shall mean, as of any date of calculation, the lesser of (i) 10% of the original stated principal amount of the Series 2005 A Bonds; (ii) the maximum amount of principal and interest which will become due on the Series 2005 A Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Series 2005 A Bonds.

"Series 2005 A Bonds Sinking Fund" shall mean the Series 2005 A Bonds Sinking Fund created by the Ordinance.

"Series 2005 B Bonds" shall mean the Parking System Refunding Revenue Bonds, Series 2005 B.

"Series 2005 B Bonds Rebate Fund" shall mean the Series 2005 B Bonds Rebate Fund created by the Ordinance.

"Series 2005 B Bonds Redemption Account" shall mean the Series 2005 B Bonds Redemption Account created by the Ordinance.

"Series 2005 B Bonds Reserve Account" shall mean the Series 2005 B Bonds Reserve Account created by the Ordinance.

"Series 2005 B Bonds Reserve Requirement" shall mean, as of any date of calculation, the lesser of (i) 10% of the original stated principal amount of the Series 2005 B Bonds; (ii) the maximum amount of principal and interest which will become due on the Series 2005 B Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Series 2005 B Bonds.

"Series 2005 B Bonds Sinking Fund" shall mean the Series 2005 B Bonds Sinking Fund created by the Ordinance.

"State" shall mean the State of West Virginia.

"Supplemental Resolution" shall mean any ordinance or resolution amendatory of the Ordinance or supplemental to the Ordinance and, when preceded by the article "the," refers specifically to the Supplemental Resolution authorizing the sale of the Series 2005 Bonds and the Note to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"Surplus Revenues" shall mean the Net Revenues not required by the Ordinance to be set aside and held for the payment of or security for the Bonds or any other obligations of the City, including, without limitation, the Sinking Funds, the Reserve Accounts and the Repair, Operations and Maintenance Fund.

Authorization of Refunding and Redemption of the Series 1993 Bonds.

The lien of the Series 1993 Bonds outstanding as of the date of issuance of the Note imposed by the Prior Ordinance on the revenue of the Parking System is hereby ordered terminated, discharged and released upon the payment onto the Series 1993 Escrow Fund from the proceeds of the Note, together with other moneys available therefor, including those moneys transferred as provided below, of the following: (a) an amount equal to the fiscal and paying agent charges, and (b) an amount which will be simultaneously invested in United States Treasury Obligations bearing interest and having maturities sufficient to provide (i) for the payment of the principal of the Series 1993 Bonds as the same mature on each principal payment date established with respect thereto prior to the Series 1993 Bonds Redemption Date, if any, established for such Series 1993 Bonds, (ii) for the payment of the redemption price of the Series 1993 Bonds outstanding on the Series 1993 Bonds Redemption Date, if any, established for such Series 1993 Bonds, and (iii) for the payment of the interest on the Series 1993 Bonds as the same becomes due. Contemporaneously with the deposit of proceeds of the Note into the Series 1993 Escrow Fund, and as prescribed by the Series 1993 Escrow Agreement, the amounts on deposit in the sinking fund including the reserve account therein, created and maintained on behalf of the Series 1993 Bonds shall be deposited into the Series 1993Escrow Fund and simultaneously invested as provided in the Series 1993 Escrow Agreement.

Authorization of Refunding and Redemption of the Series 1994 and Series 1995 Bonds.

The lien of the Series 1994 and Series 1995 Bonds outstanding as of the date of issuance of the Series 2005 A Bonds imposed by the Prior Ordinances on the revenues of the Parking System is hereby ordered terminated, discharged and released upon the payment into the Series 1994/1995 Escrow Fund relating thereto from the proceeds of the Series 2005 A Bonds, together with other moneys available therefor, including those moneys transferred as provided below, of the following: (a) an amount equal to the fiscal and paying agent charges, and (b) an amount which will be simultaneously invested in United States Treasury Obligations bearing interest and having maturities sufficient to provide (i) for the payment of the principal of the Series 1994 and Series 1995 Bonds as the same mature on each principal payment date established with respect thereto prior to the Series 1994 and Series 1995 Bonds Redemption Date, if any, established for such Series 1994 and Series 1995 Bonds, (ii) for the payment of the

redemption price of the Series 1994 and Series 1995 Bonds outstanding on the Series 1994 and Series 1995 Bonds Redemption Date, if any, established for such Series 1994 and Series 1995 Bonds, and (iii) for the payment of the interest on the Series 1994 and Series 1995 Bonds as the same becomes due. Contemporaneously with the deposit of proceeds of the Series 2005 A Bonds into the Series 1994/1995 Escrow Fund, and as prescribed by the Series 1994/1995 Escrow Agreement, the amounts on deposit in each sinking fund including the reserve account therein, created and maintained on behalf of the Series 1994 and Series 1995 Bonds shall be deposited into the Series 1994/1995 Escrow Fund and simultaneously invested as provided in the Series 1994/1995 Escrow Agreement. Upon the refunding of the Series 1994 and Series 1995 Bonds, the amounts on deposit in the Repair, Operation and Maintenance Fund created and maintained under the Prior Ordinances with respect to the Prior Bonds shall be transferred as set forth in the Supplemental Resolution.

Authorization and Term of Note.

For the purpose of refunding the Series 1993 Bonds, there shall be issued the Parking System Bond Anticipation Note. The Note shall be in such aggregate principal amount, not to exceed $3,500,000; shall be dated, shall bear interest and shall mature at such time as is provided by a supplemental resolution and shall be secured solely by the pledge of the City to issue the Series 2005 B Bonds.

Authorization and Terms of Series 2005 Bonds.

For the purpose of refunding the Series 1994 and Series 1995 Bonds, there shall be issued the Parking System Refunding Revenue Bonds, Series 2005 A. Following the issuance of the Series 2005 A Bonds and as set forth in a resolution supplemental to the Ordinance, the Notes shall convert to the Parking System Refunding Revenue Bonds, Series 2005 B of the City. The Series 2005 Bonds shall be in such aggregate principal amount, not to exceed $12,885,000; shall be dated such date; shall bear interest payable semiannually at such dates and at such rate or rates not exceeding the rate permitted by the Act; shall be in fully registered form; shall mature at such time or times, not exceeding forty (40) years after the date of issuance; shall have such denominations; and shall contain such other terms, provisions, conditions and limitations, all as provided by the Ordinance and as the City Council shall prescribe by Supplemental Resolutions adopted in connection with the sale of such Series 2005 A and Series 2005 B Bonds.

The Bonds shall be payable as to principal at the office of the Paying Agent in any coin or currency which on the respective date of payment of principal and interest, is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft of the Paying Agent mailed to the Registered Owner thereof at the address that appears on the books of the Registrar or, in the event of a default in the payment on the Series 2005 Bonds, that special record date to be fixed by the Registrar by notice given to the Registered Owners not less than ten (10) days prior to said special record date (the "Special Record Date") or, if requested in the case of such an owner of $1,000,000 or more in principal amount of Series 2005 Bonds, by wire transfer to a domestic bank account specified in writing at least five (5) days prior to the Record Date by such owner.

The Series 2005 Bonds shall, at the option of the City, be redeemable in whole or in part, at the times, in the manner, and upon payment of the redemption prices, as provided in the Supplemental Resolution.

Application of Revenues - Parking System Revenue Fund

Establishment of Funds and Accounts with Depository Bank. (A) Pursuant to the Ordinance, the following special funds are hereby created with (or continued if previously established by the Prior Ordinances), and shall be held by, the Depository Bank, separate and apart from all other funds and accounts of the Depository Bank or the City and from each other, and used solely for the purposes provided in the Ordinance:

(1) Revenue Fund (established by the Prior Ordinances);

(2) Repair, Maintenance and Operations Fund (established by the Prior Ordinances);

(3) Costs of Issuance Fund;

(4) Series 2005 A Bonds Rebate Fund; and

(5) Series 2005 B Bonds Rebate Fund.

(B) Establishment of Funds and Accounts with Commission. Pursuant to the Ordinance, the following special funds and accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds and accounts of the Commission or the City and from each other:

(1) Note Repayment Account;

(2) Note Reserve Account;

(3) Series 2005 A Bonds Sinking Fund;

(4) Series 2005 A Bonds Reserve Account;

(5) Series 2005 A Bonds Redemption Account;

(6) Series 2005 B Bonds Sinking Fund;

(7) Series 2005 B Bonds Reserve Account; and

(8) Series 2005 B Bonds Redemption Account.

Disposition of Parking System Revenues

The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the City in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner provided in the Ordinance. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(A) All revenues deposited in the Revenue Fund shall be used first to pay current Operating Expenses of the Parking System.

(B) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) commencing 6 months prior to the first interest payment date of the Series 2005 A Bonds, a sum equal to 1/6th of the amount of interest which will become due on the Series 2005 A Bonds on the next ensuing semiannual interest payment date for deposit in the Series 2005 A Bonds Sinking Fund; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2005 A Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2005 A Bonds deposited therein; and (ii) commencing 6 months prior to the first interest payment date of the Series 2005 B Bonds, a sum equal to 1/6th of the amount of interest which will become due on the Series 2005 B Bonds on the next ensuing semiannual interest payment date for deposit in the Series 2005 B Bonds Sinking Fund; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing semiannual interest payment date is less than or greater than 6 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing semiannual interest payment date, the required amount of interest coming due on such date; and provided further that, the initial amount required to be transferred from the Revenue Fund and deposited in the Series 2005 B Bonds Sinking Fund shall be reduced by the amount of accrued interest on the Series 2005 B Bonds deposited therein.

(C) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission for deposit into the respective Sinking Fund (i) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 2005 A Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 2005 A Bonds on the next ensuing annual principal payment date or mandatory Redemption Date for deposit in the Series 2005 A Bonds Sinking Fund and in the Series 2005 A Bonds Redemption Account in the case of the Term Bonds which are to be redeemed; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing annual principal payment date or mandatory Redemption Date is less than or greater than 12 months, then such monthly

payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date; and (ii) commencing 12 months prior to the first principal payment date or mandatory Redemption Date of the Series 2005 B Bonds, a sum equal to 1/12th of the amount of principal which will mature or be redeemed and become due on the Series 2005 B Bonds on the next ensuing principal payment date or mandatory Redemption Date for deposit in the Series 2005 B Bonds Sinking Fund and in the Series 2005 B Bonds Redemption Account in the case of the Term Bonds which are to be redeemed; provided that, in the event the period to elapse between the date of such initial deposit and the next ensuing annual principal payment date or mandatory Redemption Date is less than or greater than 12 months, then such monthly payments shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing principal payment date or mandatory Redemption Date, the required amount of principal coming due on such date.

(D) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) an amount to be deposited in the Series 2005 A Bonds Reserve Account which will be sufficient to remedy any decrease in value of the Series 2005 A Bonds Reserve Account below the Series 2005 A Bonds Reserve Requirement or any withdrawal from the Series 2005 A Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2005 A Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2005 A Bonds Reserve Account is less than the Series 2005 A Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2005 A Bonds Reserve Account for deposit into the Series 2005 A Bonds Sinking Fund; and (ii) an amount to be deposited in the Series 2005 B Bonds Reserve Account which will be sufficient to remedy any decrease in value of the Series 2005 B Bonds Reserve Account below the Series 2005 B Bonds Reserve Requirement or any withdrawal from the Series 2005 B Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2005 B Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2005 B Bonds Reserve Account is less than the Series 2005 B Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2005 B Bonds Reserve Account for deposit into the Series 2005 B Bonds Sinking Fund. To the extent Net Revenues and any other legally available funds are available therefor, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2005 A Bonds Reserve Account or the Series 2005 B Bonds Reserve Account to an amount equal to the respective Reserve Requirement; provided, that no payments shall be required to be made into the such Reserve Accounts whenever and as long as the amounts deposited therein shall be equal to the respective Reserve Requirement.

(E) The City shall next, each month after all payments required above have been made, transfer the balance remaining in the Revenue Fund to the Repair, Maintenance and Operation Fund. All funds in the Repair, Maintenance and Operation Fund shall be kept apart from all other funds of the City or of the Depository Bank and shall be invested and reinvested in

as provided in the Ordinance. Withdrawals and disbursements may be made from the Repair, Maintenance and Operation Fund as provided in Section 3.04 of the Ordinance.

(F) Moneys in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall be come due. Moneys in the Series 2005 A Bonds Reserve Account and the Series 2005 B Bonds Reserve Account shall be used only for the purposes of paying principal of and interest on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, as the same shall come due, when other moneys in the Series 2005 A Bonds Sinking Fund and the Series 2005 B Bonds Sinking Fund are insufficient therefor, and for no other purpose, except for permitted transfers to the respective Rebate Fund.

Except to the extent transferred to the respective Rebate Fund, all investment earnings on moneys in the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 A Bonds Redemption Account, the Series 2005 B Bonds Sinking Fund, the Series 2005 B Bonds Reserve Account and the Series 2005 B Bonds Redemption Account shall be returned, not less than once each year, by the Commission to the City, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, and then to the next ensuing principal payment due thereon.

Except to the extent transferred to the respective Rebate Fund, any withdrawals from the Series 2005 A Bonds Reserve Account and the Series 2005 B Bonds Reserve Account which result in a reduction in the balance of such accounts to below the respective Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve accounts in an amount equal to the requirement therefor.

The City shall not be required to make any further payments into the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 B Bonds Sinking Fund and the Series 2005 B Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2005 A Bonds and the Series 2005 B Bonds, respectively, and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity basis and pro rata, all in accordance with the respective principal amounts then Outstanding.

The Commission is designated as the fiscal agent for the administration of the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 A Bonds Redemption Account, the Series 2005 B Bonds Sinking Fund, the Series 2005 B Bonds Reserve Account and the Series 2005 B Bonds Redemption Account created hereunder, and all amounts required for such accounts shall be remitted to the Commission from the Revenue Fund by the City at the times provided in the Ordinance.

Moneys in the Series 2005 A Bonds Sinking Fund, the Series 2005 A Bonds Reserve Account, the Series 2005 A Bonds Redemption Account, the Series 2005 B Bonds Sinking Fund, the Series 2005 B Bonds Reserve Account and the Series 2005 B Bonds Redemption Account shall be invested and reinvested by the Commission as provided in the Ordinance.

(G) If on any payment date the Net Revenues are insufficient to place the required amount in any of the funds as hereinafter provided, the deficiency shall be made up in subsequent payments to such funds.

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

Application of Note and Bond Proceeds

Disposition of Proceeds of Note. Upon issuance and delivery of the Note, the City shall deposit into the Series 1993 Escrow Fund an amount which, together with other moneys or securities deposited therein and the earnings therein, shall be sufficient to accomplish the refunding and defeasance of the Series 1993 Bonds (which amount shall be set forth in the Escrow Agreement), fund the Note Reserve Account and fund the Cost of Issuance Fund.

Disposition of Proceeds of Series 2005 A Bonds. Upon the issuance and delivery of the Series 2005 A Bonds, the City shall forthwith deposit the proceeds thereof as follows:

A. All interest accrued on the Series 2005 A Bonds from the date thereof to the date of delivery thereof shall be deposited in the Sinking Fund for the Series 2005 A Bonds and applied to payment of interest on the Series 2005 A Bonds at the first interest payment date.

B. An amount of the proceeds of the Series 2005 A Bonds which, together with other moneys or securities deposited therein and the earnings thereon, shall be sufficient to accomplish the refunding and defeasance of the Series 1994 and Series 1995 Bonds (which amount shall be set forth in the Escrow Agreement) shall be deposited in the Escrow Fund.

C. An amount of the proceeds of the Series 2005 Bonds equal to the Reserve Requirement for the Series 2005 A Bonds shall be remitted to the Commission for deposit in the Reserve Accounts for the Series 2005 A Bonds.

D. The balance of the proceeds of the Series 2005 A Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the City solely to pay costs of issuance of the Series 2005 A Bonds and miscellaneous costs of refunding the Prior Bonds at the written direction of the City. All such costs of issuance shall be paid within 60 days of the Closing Date. Moneys not to be applied immediately to pay such costs of issuance and refunding may be invested in accordance with the Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the City to the Redemption Accounts for the Series 2005 A Bonds. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such moneys until so applied in favor of the Registered Owners of the Series 2005 A Bonds.

Conversion of Note to Series 2005 B Bonds. Following the issuance and delivery of the Series 2005 A Bonds, the Note shall be tendered to the City and the City shall deliver the Series 2005 B Bonds.

General Covenants of the City

All the covenants, agreements and provisions of the Ordinance shall be and constitute valid and legally binding covenants of the City and shall be enforceable in any court of competent jurisdiction by any Registered Owners of said Bonds. In addition to the other covenants, agreements and provisions of the Ordinance, the City hereby covenants and agrees with the Registered Owner or Owners of said Bonds in the manner provided in Article V of the Ordinance. All such covenants, agreements and provisions shall be irrevocable, except as provided in the Ordinance, as long as any of said Bonds or the interest thereon, are Outstanding and unpaid.

Bonds Not to be Indebtedness of the City

The Note and the Series 2005 Bonds shall not be or constitute an indebtedness of the City, within the meaning of any constitutional statutory or charter limitation of indebtedness, but shall be payable solely from the Net Revenues of the Parking System, as provided in the Ordinance. No Registered Owner of any Bond issued hereunder shall ever have the right to compel the exercise of the taxing power of the City, to pay said Bonds or the interest thereon.

Bonds Secured By Pledge of Net Revenues; Note is Not Secured by Revenues of the Parking System.

The payment of the debt service of all of the bonds issued under the Ordinance shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the Parking System to the extent necessary to make the payments required under the Ordinance. The Net Revenues derived from the Parking System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized, and to make the payments into

the Sinking Fund, including the Reserve Account therein, and all other payments provided for in the Ordinance, are hereby irrevocably pledged in the manner provided in the Ordinance, to the payment of the principal of and interest on the Bonds herein authorized as the same become due, and for the other purposes provided in the Ordinance. The Note is not secured by the Net Revenues of the Parking System.

Statutory Mortgage Lien Created

The Registered Owners of the Bonds issued pursuant to the Ordinance shall have a statutory mortgage lien upon the Parking System pursuant to the provisions of Section 22 of the Bond Act, which statutory mortgage lien shall exist in favor of, and shall be enforceable in any lawful manner by, the Registered Owners of the Series 2005 Bonds, and each of them, and the Parking System shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest on the Bonds issued pursuant to the Ordinance. The statutory mortgage lien shall be a first mortgage on said Parking System, and the City shall not place any other mortgage or encumbrance on said Parking System, or any part thereof.

Rates

The City will fix, establish and maintain such rates and collect such fees, rentals or other charges for the services and facilities of said Parking System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year at least sufficient to pay, one hundred fifteen per centum (115%) of the largest amount of principal and interest maturing and becoming due on said Bonds then Outstanding in any succeeding fiscal year, in addition to paying, as the same shall become due, the necessary expense of repair (including replacement), maintenance and operation of said Parking System in each fiscal year, and all obligations or indebtedness other than the Bonds payable out of revenues of said Parking System in such fiscal year, and that such rates, fees, rentals or other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Operation and Maintenance

The City will maintain the Parking System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said Parking System in the manner provided in the Ordinance.

Sale of the Parking System

The City will not voluntarily sell, mortgage or otherwise dispose of or encumber the Parking System or any property essential to the proper operation thereof while any of the Bonds authorized in the Ordinance are Outstanding except for leases or sales of space therein designed for sale or lease for commercial, business or charitable uses; provided, however, that the City may sell all or any portion the Parking System if the City shall receive from such sale

moneys adequate to fully defease all of the Outstanding Series 2005 Bonds and any additional bonds issued under the Ordinance in accordance with the provision in Section 9.01 of the Ordinance; and further provided that the City may sell or otherwise dispose of a portion of the Parking System only following a receipt of a certificate from an Independent Accountant to the effect that the Net Revenues for the remaining unsold portion of the Parking System are sufficient to meet the requirements of Section 5.05 of the Ordinance. Any proceeds received from the sale of a portion of the Parking System shall be deposited with the Commission and used to redeem Series 2005 Bonds, in inverse order, on the next available redemption date.

Issuance of Other Obligations Payable Out of Revenues

The City will not issue any other obligations for any purpose, payable from the revenues derived from the operation of said Parking System, except parity additional Bonds provided for in the Ordinance, nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or any other charge which will have priority to or be on a parity with the lien of the Bonds issued pursuant to the Ordinance and interest thereon, upon any of the income and revenues of said Parking System, or any part thereof. Any other obligations hereafter issued by the City, payable from such revenues, except such parity additional Bonds, shall contain an express statement that such obligations are junior, subordinate and inferior to the Bonds issued pursuant to the Ordinance as to lien and source and security for payment from the revenues of said Parking System, and in all other respects.

Issuance of Parity Additional Bonds

No parity additional Bonds, payable out of the revenues of the Parking System, shall be created after the issuance of any Bonds pursuant to the Ordinance, except under the conditions and in the manner provided in the Ordinance.

No such parity additional Bonds shall be issued unless the Net Revenues derived from the Parking System during any twelve (12) consecutive months during the period of eighteen (18) months immediately prior to the issuance of the additional Bonds then proposed to be issued, as set forth in a certificate of an Independent Accountant, appointed by the City, filed with the City Clerk, shall be not less than one hundred fifteen per centum (115%) of the largest amount of principal and interest which will mature and become due in any succeeding year on the Bonds issued pursuant to the Ordinance then Outstanding and on any parity additional Bonds theretofore issued and then Outstanding, and on any other obligations then Outstanding which are payable from the revenues of said Parking System, or any part thereof, and on the parity additional Bonds then proposed to be issued; provided, however, that if the parity additional bonds are refunding bonds to achieve a debt service savings, then such test shall not apply.

Such parity additional Bonds shall be issued only for the financing of the construction and acquisition of additions, extensions and improvements to the Parking System, and all revenues derived therefrom shall be deposited in the Revenue Fund created by the Ordinance or for refunding all or any part of any Bonds Outstanding under the Ordinance.

The term "parity additional Bonds" shall be deemed to mean additional Bonds issued under the provisions and within the limitations of the Ordinance, payable from the Parking System on parity with Bonds originally authorized and issued pursuant to the Ordinance. Such parity additional Bonds shall be deemed to have been issued pursuant to the Ordinance, and all of the covenants, agreements and other provisions of the Ordinance (except as to details of such parity additional Bonds inconsistent therewith) shall be for the equal benefit, protection and security of the Registered Owners of any Bonds originally authorized and issued pursuant to the Ordinance and the holders of any parity additional Bonds subsequently created within the limits of and in compliance with the Ordinance. All of such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of said Parking System and their source and security for payment from said revenues without preference of any Bond, over any other. The City shall comply fully with all the increased payments into the various funds created in the Ordinance required for such parity additional Bonds, in addition to the payments required for Bonds originally issued pursuant to the Ordinance.

The term "parity additional Bonds" shall not be deemed to include bonds, notes, certificates, or any other obligations subsequently issued, the lien of which on the revenues of the Parking System, or any part thereof, is subject to the prior and superior lien on such revenues of the Bonds issued pursuant to the Ordinance, and the City shall not issue any obligations whatsoever payable from the revenues of said Parking System, or for payment from such revenues with Bonds issued pursuant to the Ordinance, except in the manner and under the conditions provided in the Ordinance.

No parity additional Bonds shall be created at any time, however, unless all of the payments into the respective funds provided for in the Ordinance shall have been made in full to the date of issuance of such parity additional Bonds, and the City shall have fully complied with all covenants, agreements and terms of the Ordinance.

Insurance

The City will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the Parking System with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, flood, cyclone, occupancy or other hazards and risks, which insurance shall at all times be in an amount or amounts equal to the fair appraisal value of the buildings, properties, furniture, fixtures, and equipment of said Parking System. 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 City shall 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 Parking System.

Books and Records

The City will keep books and records of the Parking 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 Parking System, and any Registered Owner of a Bond or Bonds issued pursuant to the Ordinance shall have the right at all reasonable times to inspect the Parking System and all parts thereof, and all records, accounts and data of the City relating thereto.

The accounting system for the Parking System shall follow generally accepted accounting principles and safeguards. Subsidiary records as may be required shall be kept in the manner, on the forms, books, and 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 of the City shall direct. The City Treasurer of the City shall prescribe the forms and manner for depositing with said City Treasurer all sums due the City from the operation of its Parking System.

The City shall file with the Original Purchaser, and shall mail in each year to any Registered Owner or Owners of Bonds requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses and Net Revenues derived from the Parking System.

(B) A balance sheet statement showing all deposits in all the funds provided for in the Ordinance, and the status of all said funds.

The City shall also, at least once a year, cause the books, records and accounts of the Parking System to be completely audited by the State Tax Commissioner or any successor to that function or by an Independent Accountant, and shall mail upon request, and make available generally, the audit report, or a summary thereof, to any Registered Owner or Owners of Bonds issued pursuant to the Ordinance who has so requested in writing.

Services Rendered to the City

The City will not render or cause to be rendered any free parking or services of any nature by the Parking System, nor will any preferential rates be established for users thereof of the same class; and in the event the City shall authorize any board, department, agency, instrumentality, officer or employee of said City to avail itself or themselves of the facilities or services provided by the Parking System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like service under similar circumstances shall be charged said City, board, department, agency, instrumentality, officer or employee of said City, and such charges shall be paid as they accrue, and the City shall transfer from its general funds sums sufficient to pay such charges. The revenues so received shall be deemed to be revenues derived

from the operation of the Parking System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the Parking System.

Annual Operating Budget

The City shall include in its annual budget adopted prior to the beginning of each Fiscal Year, and as a separate part thereof, a detailed estimate of the expenditures for operation and maintenance of the Parking System during such succeeding fiscal year. No expenditures for the operation and maintenance of the Parking System shall be made in any fiscal year in excess of the amount provided therefor in such budget without a written finding and recommendation by the general manager of such Parking System or other duly authorized officer in charge thereof, which finding and recommendation shall state in detail the purpose of and necessity for such additional expenditures for the operation and maintenance of the Parking System, and no such additional expenditures shall be made until the City Council shall have approved such finding and recommendation and shall have authorized such additional expenditures by a resolution duly adopted. No additional expenditures in excess of ten per centum (10%) of the amount of such budget shall be made except upon the further certificate of the Parking Facilities Committee that such additional expenditures are necessary for the continued operation of said Parking System.

Enforcement of Collection

The City will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the Parking 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 charter of said City and by laws of the State.

Relocation of Parking Meters

The City will maintain parking meters on all streets where such parking meters are located and maintained on the date of enactment of the Ordinance and will not remove or relocate said parking meters unless such removal or relocation shall be recommended and approved by the officials of the City having authority to designate the location of parking meters, where such removal, relocation or substitution will materially lessen the revenues obtained from the operation of said parking meters. The covenant shall not be construed so as to prevent the removal or relocation of parking meters where such removal or relocation is made necessary by street widening or street crossings nor shall said covenant prevent the substitution, removal, relocation or change in location of parking meters necessary, essential and required for proper traffic regulations and control.

Schedule of Rates

The rates, rentals, fees and other charges for the use of the services and facilities of said Parking System, established under an ordinance previously enacted by the City, shall constitute the initial schedule of rates for said Parking System.

The City further covenants that rates, rentals, fees or other charges will be charged and collected as long as the Bonds issued hereunder, and the interest thereon are outstanding and unpaid, on all metered On-Street and Off-Street Parking Facilities for which rates, fees, rentals or other charges are now fixed, established and collected; and on any additional metered On-Street or Off-Street Parking Facilities for which parking meters are hereafter acquired and installed in or on the streets of the City.

Said initial schedule of rates shall not be reduced, nor shall any subsequent schedule of rates be at any time reduced, unless the following conditions have been complied with:

(1) That all current payments, including any deficiencies for prior payments into all the funds provided for in the Ordinance have been made in full to the end of the then Fiscal Year.

(2) That an Independent Accountant shall certify that the proposed new schedule of rates will in each year thereafter produce sufficient Net Revenues, as defined in the Ordinance, from said Parking System to equal one hundred fifteen per centum (115%) of the largest amount of principal of and interest on said Bonds which will mature and become due in any ensuing year, and on any parity additional Bonds theretofore issued and then Outstanding, or if it is then proposed that parity additional Bonds be issued, to equal one hundred fifteen centum (115%) of the largest amount of principal of and interest on said Bonds which will mature and become due in any ensuing year, and on any parity additional Bonds theretofore issued and then Outstanding and those proposed to be issued, and in either event, 115% of any other obligations then Outstanding which are payable from the Net Revenues of the Parking System.

No Competing Facilities

The City hereby irrevocably covenants that it will not construct or acquire any on-street or off-street parking facilities for which no fees or other charges are fixed, established and collected and which will be competitive with the On-Street or Off-Street Parking Facilities of said Parking System; Provided, That the City may designate certain streets or areas of the City as special parking areas upon a certification from the Parking Facilities Committee that (1) such special designated parking area is not competing with the Parking System, (2) that the City is current on all payments required hereunder, and (3) that the number of spaces in such areas do not exceed 2% of the total parking spaces in the Parking System. Notwithstanding the provisions set forth above, the City may from time to time offer promotional free parking in designated areas, provided that no such promotions shall exceed 30 consecutive days, and the City may from time to time provide special event parking rates.

## Defaults and Remedies

### Events of Default

Each of the following events shall constitute an "Event of Default" with respect to the Bonds.

(A) If default occurs in the due and punctual payment of the principal of or interest on any Bonds;

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in the Ordinance, the Supplemental Resolution or in the Bonds and such default shall have continued for a period of 30 days after the City shall have been given written notice of such default by the Depository Bank holding any fund or account hereunder or a Registered Owner of a Bond; or

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

### Remedies

Any Registered Owner of Bonds issued under the provisions of the Ordinance or any trustee acting for such Bondholders in the manner hereinafter provided, may either at law or in equity, by suit, action, mandamus or other proceeding at any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted and contained in the Ordinance, and may enforce and compel the performance of all duties required by the Ordinance or by any applicable statutes to be performed by the City or by any officer thereof, including the fixing, charging and collecting of rates, fees, rentals or charges for the services and facilities of the Parking System.

In the event that default shall be made in the payment of the interest on or the principal of any of the Bonds issued pursuant to the Ordinance as the same shall become due, or in the making of the payments into any reserve or sinking fund or any other payments required to be made by the Ordinance, or in the event that the City or any officer, agent or employee thereof shall fail or refuse to comply with provisions of the Ordinance, or shall default in any covenant made herein, and in the further event that any such default shall continue for a period of thirty days, any Registered Owner of such Bonds or any trustee appointed to represent Bondholders as hereinafter provided shall be entitled as of right to appointment of a receiver of the Parking System in an appropriate judicial proceeding in a court of competent jurisdiction, whether or not such Registered Owner or trustee is also seeking or shall have sought to enforce any other right or exercise any other remedy in connection with Bonds issued pursuant to the Ordinance.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of said Parking 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 shall exercise all the rights and powers of the City with respect to said facilities as the City itself might do. Such receiver shall collect and receive all revenues, maintain and operate such facilities in the manner provided in the Ordinance and comply under the jurisdiction of the court appointing such receiver, with all of the provisions of the Ordinance.

Whenever all that is due upon the Bonds issued pursuant to the Ordinance and interest thereon, and under any covenants of the 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 Parking System, shall have been paid and made good, and all defaults under the provisions of the Ordinance shall have been cured and made good, possession of the Parking System shall be surrendered to the City upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of Bonds issued pursuant to the Ordinance, or any trustee appointed for Bondholders as hereinafter provided, shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver shall in the performance of the powers hereinabove conferred upon him 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 appointed in the discretion of such court. Nothing contained in the Ordinance 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 in the Ordinance.

Any receiver appointed as provided herein shall hold and operate the Parking System in the name of the City and for the joint protection and benefit of the City and Registered Owners of Bonds issued pursuant to the Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging to pertaining to the Parking System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the Parking System, for the sole purpose of the protection of both the City and Bondholders, and the curing and making good of any default under the provisions of the Ordinance, and the title to and ownership of said Parking System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the Parking System.

The Registered Owner or Owners of Bonds in an aggregate principal amount of not less than twenty-five per centum (25%) of Bonds issued under the Ordinance then Outstanding may be a duly executed certificate in writing appointing a trustee for Registered Owners of Bonds issued pursuant to the Ordinance with authority to represent such Bondholders in any legal proceedings for the enforcement and protection of the rights of such Bondholders. Such certificate shall be executed by such Bondholders or their duly authorized attorneys or representatives, and shall be filed in the office of the City Clerk.

Investment of Funds

Any moneys held as a part of the funds and accounts created by the 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 written direction of the City in any Qualified Investments to the fullest extent possible under applicable laws, the Ordinance, the need for such moneys for the purposes set forth in the Ordinance.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by Section 7.01 of the Ordinance through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Restrictions as to Arbitrage Bonds

The City covenants that (i) it will restrict the use of the proceeds of the Series 2005 Bonds in such manner and to such extent as may be necessary, so that the Series 2005 Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and the Regulations prescribed thereunder, 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 2005 Bonds) so that the interest on the Series 2005 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.

Modification of Amendment

Prior to issuance of the Series 2005 Bonds, the Ordinance may be amended or supplemented in any way by the Supplemental Resolution. All provisions required by the Bond Insurer, if any, shall be set forth in the Supplemental Resolution and to the extent they constitute an amendment or modification of the Ordinance, shall be controlling. Following issuance of the Series 2005 Bonds, the Ordinance and any Supplemental Resolution may be amended or modified without the consent of any Registered Owner or other person, solely for the purpose of maintaining the tax-exempt status of the Series 2005 Bonds, provided that, in the event any of the Bonds are insured, no such amendment or modification which adversely affects the security for such Bonds or the rights of the applicable Bond Insurer for such Bonds may be effected

without the written consent of such Bond Insurer. Otherwise, no materially adverse amendment or modification to the Ordinance, or of any Supplemental Resolution, may be made without the written consent of the Registered Owners of the Bonds then Outstanding and affected thereby and the Bond Insurer. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, any Bond without the express written consent of the Registered Owner of such Bond, nor reduce the percentage of Bonds required for consent to any such modification or amendment.

Defeasance of Bonds

If the City shall pay or cause to be paid, or there shall otherwise be paid, to the respective Registered Owners of all the Series 2005 Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in the Ordinance, then the Ordinance and the pledges of the Net Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the City on behalf of the Registered Owners of the Series 2005 Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied, except as may be necessary to assure the exclusion of interest on the Series 2005 Bonds from gross income for federal income tax purposes.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the Ordinance. All Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the Ordinance if there shall have been deposited with the Commission or an escrow trustee either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Commission or said escrow trustee at the same or earlier time shall be sufficient, to pay when due the principal of, any redemption premium on and interest due and to become due on said Bonds on and prior to the maturity date thereof, or if the City irrevocably determines to redeem any of said Bonds prior to the maturity thereof, on and prior to said redemption date. Neither securities nor moneys deposited with the Commission or an escrow trustee pursuant to the Ordinance nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Commission or said escrow trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if any, and interest to become due on said Bonds on and prior to such maturity or redemption dates thereof, and interest earned from such reinvestments shall be paid over to the City as received by the Commission or said escrow trustee, free and clear of any trust, lien or pledge. For the purpose of

the Ordinance, securities shall mean and include only Government Obligations or such additional securities as shall be set forth in the Supplemental Resolution.

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# APPENDIX C

Audited Financial Statements City of Charleston

AUDIT REPORT OF THE
MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

# AUDIT REPORT OF THE
# MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
# FOR THE FISCAL YEAR ENDED JUNE 30, 2003

This audit has been conducted pursuant to the authority and duty of the State Auditor as Chief Inspector and Supervisor of Public Offices to conduct an annual inspection of all political subdivisions of the State of West Virginia and any agency created by these subdivisions. This power is granted by West Virginia Code 6-9-1 et seq.

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF FUNDS INCLUDED IN REPORT
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

## GOVERNMENTAL FUND TYPES

### MAJOR FUNDS

General
Coal Severance Tax
HOME
Civic Center
Parking System

### NONMAJOR FUNDS

*Special Revenue Funds*
Municipal Stabilization
Community Development
Supportive Housing
FEMA Flood Recovery
Municipal Beautification
Special Demolition
Sister Cities
Solid Waste
Police & Fire Donations
Asset Forfeiture
Municipal Court
Human Rights
Rental Rehabilitation
Department of Transportation Grant
Local Law Enforcement Block Grant
Metro Loan
Police Grants

*Capital Projects Funds*
Infrastructure
Bridge
South Side Bridge Ramp
South Side Recreation
Civic Center Project
Civic Center Capital Improvement
Municipal Auditorium Capital Improvement
Center for Arts & Sciences
Soccer Field
General Maintenance
Public Safety

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF FUNDS INCLUDED IN REPORT(CONTINUED)
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

*Debt Service Fund*
Sinking Fund

*Permanent Fund*
Springhill Cemetery

**FIDUCIARY FUND TYPES**

*Agency Funds*
Metro Drug Enforcement Task Force
Pending Forfeiture
Civic Center Ticket
Police Asset & Liability

*Pension Funds*
Policemen's Pension and Relief
Firemen's Pension and Relief

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
TABLE OF CONTENTS
FOR THE FISCAL YEAR ENDED JUNE 30, 2003


Pages

**INTRODUCTORY SECTION**

Municipal Officials . . . . . 1

**FINANCIAL SECTION**

Independent Auditor's Report . . . . . 2 - 3

*Government-wide Financial Statements:*

Statement of Net Assets . . . . . 4 - 5
Statement of Activities . . . . . 6

*Fund Financial Statements:*

Balance Sheet-Governmental Funds . . . . . 7
Reconciliation of the Balance Sheet-Governmental Funds to the Statement of Net Assets . . . . . 8
Statement of Revenues, Expenditures and Changes in
Fund Balances - Governmental Funds . . . . . 9-10
Reconciliation of the Statement of Revenues, Expenditures and Changes in
Fund Balances of Governmental Funds to the Statement of Activities . . . . . 11
Statement of Revenues, Expenditures and Changes in
Fund Balance - Budget and Actual - General Fund . . . . . 12-13
Statement of Revenues, Expenditures and Changes in
Fund Balance - Budget and Actual - Coal Severance Tax Fund . . . . . 14
Statement of Net Assets - Proprietary Funds . . . . . 15-17
Statement of Revenues, Expenses and Changes in
Fund Net Assets - Proprietary Funds . . . . . 18
Statement of Cash Flows - Proprietary Funds . . . . . 19-20
Statement of Fiduciary Net Assets - Fiduciary Funds . . . . . 21
Statement of Changes in Fiduciary Net Assets - Fiduciary Funds . . . . . 22

*Notes to the Financial Statements* . . . . . 23-49

*Required Supplementary Information:*
Schedules of Funding Progress- Policemen's and Firemen's Pension and Relief Funds . . . . . 50

**COMBINING AND INDIVIDUAL FUND STATEMENTS**

Combining Balance Sheet - Nonmajor Governmental Funds . . . . . 51
Combining Statement of Revenues, Expenditures and
Changes in Fund Balances - Nonmajor Governmental Funds . . . . . 52-53

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
TABLE OF CONTENTS (CONTINUED)
FOR THE FISCAL YEAR ENDED JUNE 30, 2003


| | Pages |
|---|---|
| Combining Balance Sheet - Nonmajor Governmental - Special Revenue Funds | 54-56 |
| Combining Statement of Revenues, Expenditures and Changes in Fund Balances - Nonmajor Governmental - Special Revenue Funds | 57-59 |
| Combining Balance Sheet - Nonmajor Governmental - Capital Projects Funds | 60-61 |
| Combining Statement of Revenues, Expenditures and Changes in Fund Balances - Nonmajor Governmental - Capital Projects Funds | 62-63 |
| Combining Statement of Fiduciary Net Assets - Agency Funds | 64 |
| Combining Statement of Plan Net Assets - Pension Trust Funds | 65 |
| Combining Statement of Changes in Plan Net Assets - Pension Trust Funds | 66 |

**SINGLE AUDIT REPORTING PACKAGE**

| | |
|---|---|
| Report on Compliance and on Internal Control over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards* | 67-68 |
| Report on Compliance with Requirements Applicable to Each Major Program and on Internal Control over Compliance in Accordance with OMB Circular A-133 and Supplementary Schedule of Expenditures of Federal Awards | 69-70 |
| Schedule of Expenditures of Federal Awards | 71-73 |
| Notes to the Schedule of Expenditures of Federal Awards | 74 |
| Schedule of Findings and Questioned Costs | 75-77 |
| Corrective Action Plan | 78 |
| Summary Schedule of Prior Audit Findings | 79 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
MUNICIPAL OFFICIALS
For the Fiscal Year Ended June 30, 2003

| OFFICE | NAME | TERM |
|---|---|---|
| | **Elective** | |
| Mayor: | Jay Goldman | 06-21-99 / 6-21-03 |
| | Danny Jones | 06-21-03 / 6-21-07 |
| Treasurer: | Chris Smith | 06-21-99 / 6-21-03 |
| | Victor Grigoraci | 06-21-03 / 6-21-07 |
| Municipal Judge: | Carole Bloom | 06-21-99 / 6-21-03 |
| | | 06-21-03 / 6-21-07 |

## Council Members

| June 21, 1999 to June 21, 2003 | | June 21, 2003 to June 21, 2007 | |
|---|---|---|---|
| John Charnock | Kenneth McKnight | Archie Chestnut | Ditty L. Markham |
| Sara Crickenberger | Ditty Markham | Michael Clowser | John Miller, Jr. |
| Mary Jean Davis | David D. Molgaard | Mary Jean Davis | Paul James Monroe |
| Bobby Haas | Betty Morton | Harry Deitzler | Betty Morton |
| Jim Harris, Jr. | Linda Nielsen | Geneva Foster | Linda M. Nielsen |
| Ryan Henry | Fred Pettry | Cheryle Hall | Teresa"Tricky" Reed |
| Patrick Jones | Donna Prunty | William Hanna | Bobby Reishman |
| William "Bill" Kimberling | Y. Howard Quick, Jr. | Jim Harris, Jr. | Brenda H. Robertson |
| Henry Knauff | Bobby Reishman | Jack E. Harrison | Mark A. Sadd |
| J. Thomas Lane | Larry L. Roller | David Kent Higgins | Edward Talkington |
| David Lanham | Fred Snuffer | Patrick Jones | Jerry L. Ware |
| James "Moses" Lanham | Edward Talkington | J. Thomas Lane | Marc Weintraub |
| Charles W. Loeb, Jr. | Beth Fouty Young | James "Moses" Lanham | Bob White |
| Mary Jane Lopez | Mark Weintraub | Charles W. Loeb, Jr. | |

## Appointed

| | | | |
|---|---|---|---|
| City Manager: | Sherry Risk<br>David Molgaard | Mayor Assistant: | Nancy Dodson<br>Rod Blackstone |
| Finance Director: | Ronald L. Eddy | City Collector: | Ken Guthrie |
| City Clerk: | James Reishman | City Engineer: | Lee McCoy<br>Chris Knox |
| Attorney: | Kim Weber<br>Delores Martin | Economic & Community Development Director: | Janet Mathews |
| City Auditor: | Brenda J. Lemon, CPA | | |

# *FINANCIAL SECTION*

State of West Virginia
Office of the State Auditor
1900 Kanawha Boulevard, East
State Capitol Complex, Building 1, Room W-100
Charleston, West Virginia 25305

Glen B. Gainer III
State Auditor

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## *INDEPENDENT AUDITOR'S REPORT*

Honorable Mayor and Council
Municipality of Charleston
Charleston, West Virginia 25330

We have audited the accompanying financial statements of the governmental activities, the business-type activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of the Municipality of Charleston, West Virginia as of and for the year ended June 30, 2003, which collectively comprise the municipality's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the Municipality of Charleston's management. Our responsibility is to express opinions on these financial statements based on our audit. We did not audit the financial statements of the Charleston Sanitary Board, the discretely presented component unit. Those financial statements were audited by other auditors whose report thereon has been furnished to us, and our opinion, insofar as it relates to the amounts included for the Charleston Sanitary Board is based on the report of the other auditors.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit and the report of other auditors provides a reasonable basis for our opinions.

As discussed in the report of the other auditors, the Sanitary Board of the City of Charleston's sewer system donated by the City on July 1, 1952, is recorded at a nominal value of $1. In the other auditor's opinion, these assets should be recorded at fair market value at date of receipt and depreciated over their useful life to conform with accounting principles generally accepted in the United States of America.

In our opinion, based on our audit and the report of other auditors, except for the effects of such adjustments, if any, as might have been necessary because of the Sanitary Board not properly reflecting donated fixed assets on the financial statements as described in the preceding paragraph, the financial statements referred to above present fairly, in all material respects, the respective financial position of the discretely presented component unit of the Municipality of Charleston, West Virginia, as of June 30, 2003, and the respective changes in financial position , where applicable, thereof for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In addition, in our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Municipality of Charleston, West Virginia, as of June 30, 2003, and the respective changes in financial position and cash flows, where applicable, thereof and the respective budgetary comparison for the General Fund and Coal Severance Tax Special Revenue Fund for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated February 5, 2004 on our consideration of the municipality's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grants. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

As described in Note I-B, the Municipality of Charleston, West Virginia has implemented a new financial reporting model, as required by the provisions of GASB Statement No. 34, *Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments*, as of June 30, 2003.

The Municipality of Charleston, West Virginia has not presented the Management's Discussion and Analysis that the Governmental Accounting Standards Board has determined is necessary to supplement, although not required to be part of, the basic financial statements. The information related to the funding of the defined benefit pension trust funds, on page 62, is not a required part of the basic financial statements, but is supplementary information required by the Governmental Accounting Standards Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Municipality of Charleston, West Virginia's basic financial statements. The combining and individual nonmajor fund financial statements are presented for purposes of additional analysis and are not a required part of the basic financial statements. The combining and individual fund financial statements have been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, are fairly stated in all material respects in relation to the basic financial statements taken as a whole.

Respectfully submitted,

Glen B. Gainer III
West Virginia State Auditor

February 5, 2004

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF NET ASSETS
June 30, 2003

| | Primary Government | | | Component Unit |
|---|---|---|---|---|
| | Governmental Activities | Business-type Activities | Total | Sanitary Board |
| **ASSETS** | | | | |
| Current assets: | | | | |
| Cash and cash equivalents | $ 10,449,003 | $ 157,298 | $ 10,606,301 | $ 2,340,377 |
| Investments | 973,658 | -- | 973,658 | -- |
| Receivables - net | | | | |
| Accounts | 9,345,777 | 94,518 | 9,440,295 | 1,083,209 |
| Accrued interest | 12,415 | -- | 12,415 | -- |
| Taxes | 182,143 | -- | 182,143 | -- |
| Loans | 4,266,664 | -- | 4,266,664 | -- |
| Grants | 98,725 | -- | 98,725 | -- |
| Internal balances | 220,113 | ( 220,113) | -- | -- |
| Due from: | | | | |
| Component units | 500 | -- | 500 | -- |
| Other governments | 16,808 | -- | 16,808 | -- |
| Prepaid expenses | 855,207 | 137,596 | 992,803 | 192,736 |
| Restricted assets: | | | | |
| Regular account | -- | 2,390,528 | 2,390,528 | -- |
| Renewal and replacement | -- | 1,228,491 | 1,228,491 | -- |
| Restricted cash | 1,162,051 | -- | 1,162,051 | 2,932,047 |
| Reserve for construction | -- | 91,014 | 91,014 | -- |
| Capital assets: | | | | |
| Land | 2,903,627 | 3,105,936 | 6,009,563 | 755,987 |
| Buildings and improvements | 20,065,495 | 60,321,670 | 80,387,165 | -- |
| Structures and improvements | 10,193,886 | -- | 10,193,886 | 8,270,588 |
| Infrastructure | 60,491,297 | -- | 60,491,297 | -- |
| Transmission and distribution | -- | -- | -- | 66,530,085 |
| Machinery and equipment | 22,820,897 | 1,399,815 | 24,220,712 | 3,932,458 |
| Construction in progress | 5,088,283 | 844,921 | 5,933,204 | 2,679,008 |
| Sewer system | -- | -- | -- | 1 |
| Less: accumulated depreciation | ( 58,819,905) | ( 35,599,356) | ( 94,419,261) | ( 32,887,397) |
| Other debits: | | | | |
| Unamortized bond issue costs | 26,421 | -- | 26,421 | 125,911 |
| Total assets | $ 90,353,065 | $ 33,952,318 | $ 124,305,383 | $ 55,955,010 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF NET ASSETS
June 30, 2003

| | Primary Government | | | Component Unit |
|---|---|---|---|---|
| | Governmental Activities | Business-type Activities | Total | Sanitary Board |
| **LIABILITIES** | | | | |
| Current liabilities payable from current assets: | | | | |
| Accounts payable | $ 1,139,342 | $ 73,965 | $ 1,213,307 | $ 517,030 |
| Payroll payable | 1,190,706 | 73,384 | 1,264,090 | -- |
| Other accrued expenses | 277,238 | 41,669 | 318,907 | -- |
| Leases payable | -- | -- | -- | 233,990 |
| Benefits payable | 49,545 | -- | 49,545 | -- |
| Reserve for future insurance claims | 655,000 | -- | 655,000 | -- |
| Due to: | | | | |
| Primary government | -- | -- | -- | 500 |
| Current liabilities payable from restricted assets: | | | | |
| Accrued bond interest payable | 944,313 | 152,219 | 1,096,532 | 235,447 |
| Customer deposits | -- | 43,493 | 43,493 | -- |
| Deferred revenues: | | | | |
| Charges for services | -- | 835 | 835 | -- |
| Unearned revenue | 4,005,803 | -- | 4,005,803 | -- |
| Noncurrent liabilities:(note IV.F.) | | | | |
| Due within one year | 14,220,909 | 972,504 | 15,193,413 | 1,768,564 |
| Due in more than one year | 28,184,545 | 19,592,873 | 47,777,418 | 20,175,191 |
| Total liabilities | 50,667,401 | 20,950,942 | 71,618,343 | 22,930,722 |
| **NET ASSETS** | | | | |
| Invested in capital assets (net of related debt) | 48,864,912 | 9,576,130 | 58,441,042 | 27,835,997 |
| Restricted for: | | | | |
| Debt service | 2,224,872 | 3,710,033 | 5,934,905 | 2,404,800 |
| Capital projects | 3,205,031 | -- | 3,205,031 | -- |
| Community development projects | 3,613,282 | -- | 3,613,282 | -- |
| Public safety | 635,160 | -- | 635,160 | -- |
| Perpetual care: | | | | |
| Expendable | 396,482 | -- | 396,482 | -- |
| Nonexpendable | 818,985 | -- | 818,985 | -- |
| Unrestricted | ( 20,073,060) | ( 284,787) | ( 20,357,847) | 2,783,491 |
| Total net assets | $ 39,685,664 | $ 13,001,376 | $ 52,687,040 | $ 33,024,288 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF ACTIVITIES
For the Fiscal Year Ended June 30, 2003

| Functions / Programs | Expenses | Program Revenues: Charges for Services | Program Revenues: Operating Grants and Contributions | Program Revenues: Capital Grants and Contributions | Net (Expense) Revenues and Changes in Net Assets: Primary Government: Governmental Activities | Primary Government: Business-type Activities | Primary Government: Total | Component Unit: Sanitary Board |
|---|---|---|---|---|---|---|---|---|
| **Primary Government:** | | | | | | | | |
| Governmental activities: | | | | | | | | |
| General government | $ 16,007,554 | $ 12,212,222 | $ 1,194,027 | $ 1,618,772 | $ (982,533) | $ -- | $ (982,533) | $ -- |
| Public safety | 31,452,519 | 22,898 | 269,382 | 301,214 | (30,859,025) | -- | (30,859,025) | -- |
| Streets and transportation | 5,535,598 | -- | -- | -- | (5,535,598) | -- | (5,535,598) | -- |
| Health and sanitation | 4,021,705 | -- | -- | -- | (4,021,705) | -- | (4,021,705) | -- |
| Culture and recreation | 4,786,629 | 56,114 | -- | 5,748 | (4,724,767) | -- | (4,724,767) | -- |
| Social services | 803,574 | -- | 97,198 | 5,041 | (701,335) | -- | (701,335) | -- |
| Economic development | 1,814,596 | -- | 1,860,580 | 1,141,787 | 1,187,771 | -- | 1,187,771 | -- |
| Administrative and general | 24,095 | -- | -- | -- | (24,095) | -- | (24,095) | -- |
| Interest on long-term debt | 972,348 | -- | -- | -- | (972,348) | -- | (972,348) | -- |
| Total governmental activities | 65,418,618 | 12,291,234 | 3,421,187 | 3,072,562 | (46,633,635) | -- | (46,633,635) | -- |
| Business type activities: | | | | | | | | |
| Civic center | 3,703,883 | 2,216,525 | -- | 5,253 | -- | (1,482,105) | (1,482,105) | -- |
| Parking system | 3,601,138 | 2,743,502 | -- | -- | -- | (857,636) | (857,636) | -- |
| Total business type activities | 7,305,021 | 4,960,027 | -- | 5,253 | -- | (2,339,741) | (2,339,741) | -- |
| Total primary government | $ 72,723,639 | $ 17,251,261 | $ 3,421,187 | $ 3,077,815 | $ (46,633,635) | $ (2,339,741) | $ (48,973,376) | $ -- |
| Component unit: | | | | | | | | |
| Sanitary board | $ 9,048,405 | $ 10,132,183 | $ -- | $ -- | $ -- | $ -- | $ -- | $ 1,083,778 |
| Total component unit | $ 9,048,405 | $ 10,132,183 | $ -- | $ -- | $ -- | $ -- | $ -- | $ 1,083,778 |
| General revenues: | | | | | | | | |
| Property taxes | | | | | $ 10,800,459 | $ -- | $ 10,800,459 | $ -- |
| Other taxes | | | | | 35,326,363 | -- | 35,326,363 | -- |
| Unrestricted investment earnings | | | | | 118,440 | 112,953 | 231,393 | 68,523 |
| Contributions from other entities | | | | | 15,766 | -- | 15,766 | -- |
| Gain(loss) on sale of capital assets | | | | | 100,251 | (2,947) | 97,304 | -- |
| Miscellaneous | | | | | 15,446 | | 15,446 | 33,767 |
| Transfers | | | | | (1,810,573) | 1,810,573 | -- | -- |
| Total general revenues and transfers | | | | | 44,566,152 | 1,920,579 | 46,486,731 | 102,290 |
| Change in net assets | | | | | (2,067,483) | (419,162) | (2,486,645) | 1,186,068 |
| Net assets - beginning | | | | | 41,753,147 | 13,420,538 | 55,173,685 | 31,838,220 |
| Net assets - ending | | | | | $ 39,685,664 | $ 13,001,376 | $ 52,687,040 | $ 33,024,288 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
BALANCE SHEET - GOVERNMENTAL FUNDS
June 30, 2003

| | General | Coal Severance Tax | HOME | Other nonmajor Governmental Funds | Total Governmental Funds |
|---|---|---|---|---|---|
| **ASSETS** | | | | | |
| **Current:** | | | | | |
| Cash and cash equivalents | $ 4,598,989 | $ 29,178 | $ 19,561 | $ 5,801,275 | $ 10,449,003 |
| Investments | -- | -- | -- | 973,658 | 973,658 |
| Receivables - net: | | | | | |
| Taxes | -- | -- | -- | 91,897 | 91,897 |
| Accounts | 8,913,026 | -- | -- | 432,751 | 9,345,777 |
| Grants | -- | -- | -- | 98,725 | 98,725 |
| Loans | -- | -- | 2,466,881 | 1,799,783 | 4,266,664 |
| Accrued interest | -- | -- | -- | 12,415 | 12,415 |
| Due from: | | | | | |
| Other funds | 727,263 | -- | -- | 49,121 | 776,384 |
| Other governments | 16,808 | -- | -- | -- | 16,808 |
| Component units | 500 | -- | -- | -- | 500 |
| Prepaid expenses | 855,207 | -- | -- | -- | 855,207 |
| Restricted cash | -- | -- | -- | 1,162,051 | 1,162,051 |
| Intergovernmental receivable-restricted | -- | -- | -- | -- | -- |
| Total assets | 15,111,793 | 29,178 | 2,486,442 | 10,421,676 | 28,049,089 |
| **LIABILITIES AND FUND BALANCES** | | | | | |
| **Liabilities:** | | | | | |
| Accounts payable | 754,982 | -- | 2,420 | 381,940 | 1,139,342 |
| Payroll payable | 1,190,706 | -- | -- | -- | 1,190,706 |
| Other accrued expenses | 277,238 | -- | -- | -- | 277,238 |
| Benefits payable | 49,545 | -- | -- | -- | 49,545 |
| Reserve for future insurance claims | 655,000 | -- | -- | -- | 655,000 |
| Due to: | | | | | |
| Other funds | 393,784 | -- | 7,243 | 155,246 | 556,273 |
| Deferred revenue | 234,537 | -- | 2,477,717 | 1,293,549 | 4,005,803 |
| Total liabilities | 3,555,792 | -- | 2,487,380 | 1,830,735 | 7,873,907 |
| **Fund balances:** | | | | | |
| Reserved for: | | | | | |
| Encumbrances | 786,001 | -- | -- | -- | 786,001 |
| Perpetual care | -- | -- | -- | 1,207,367 | 1,207,367 |
| Debt service | -- | -- | -- | 2,536,961 | 2,536,961 |
| Community development | -- | -- | (938) | 2,063,769 | 2,062,831 |
| Capital projects | -- | -- | -- | 2,194,158 | 2,194,158 |
| Public safety | -- | 29,178 | -- | 138,083 | 167,261 |
| Unreserved, reported in: | | | | | |
| General fund | 10,770,000 | -- | -- | -- | 10,770,000 |
| Special revenue funds | -- | -- | -- | 450,603 | 450,603 |
| Total fund balances | 11,556,001 | 29,178 | (938) | 8,590,941 | 20,175,182 |
| Total liabilities and fund balances | $ 15,111,793 | $ 29,178 | $ 2,486,442 | $ 10,421,676 | $ 28,049,089 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
RECONCILIATION OF BALANCE SHEET - GOVERNMENTAL FUNDS
TO THE STATEMENT OF NET ASSETS
June 30, 2003

| | | |
|---|---|---|
| Total fund balances on the governmental fund's balance sheet | $ | 20,175,182 |
| Amounts reported for governmental activities in the statement of net assets are different because: | | |
| Capital assets used in governmental activities are not financial resources and, therefore not reported in the funds. | | 62,743,580 |
| Other long-term assets are not available to pay for current-year expenditures and, therefore, are deferred in the funds. | | 90,247 |
| Deferral of bond issuance cost for bonds issued during the fiscal year that will be amortized over the life of the bonds which is not reported in the funds. | | 26,421 |
| Long-term liabilities, including bonds payable, are not due and payable in the current period and therefore are not reported in the funds (note II.A.) | | ( 43,349,766) |
| Net assets of governmental activities | $ | 39,685,664 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES -
GOVERNMENTAL FUNDS
For the Fiscal Year Ended June 30, 2003

| | General | Coal Severance Tax | HOME | Other nonmajor Governmental Funds | Total Governmental Funds |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| Taxes: | | | | | |
| Ad valorem property taxes | $ 8,306,280 | $ -- | $ -- | $ 2,494,176 | $ 10,800,456 |
| Business & occupation tax | 31,619,878 | -- | -- | -- | 31,619,878 |
| Alcoholic beverages tax | 371,664 | -- | -- | -- | 371,664 |
| Utility services tax | 1,828,767 | -- | -- | -- | 1,828,767 |
| Hotel occupancy tax | 1,042,551 | -- | -- | -- | 1,042,551 |
| Amusement tax | 264,742 | -- | -- | -- | 264,742 |
| Other taxes | 22,905 | -- | -- | -- | 22,905 |
| Licenses and permits | 1,300,538 | -- | -- | -- | 1,300,538 |
| Intergovernmental: | | | | | |
| Federal | 748,846 | -- | 427,217 | 5,347,036 | 6,523,099 |
| State | -- | 114,591 | -- | 25,593 | 140,184 |
| Local | -- | -- | -- | 20,602 | 20,602 |
| Charges for services | 5,983,518 | -- | -- | 3,870,893 | 9,854,411 |
| Fines and forfeits | 2,240 | -- | -- | 734,757 | 736,997 |
| Interest and investment earnings | 10,000 | 65 | 117 | 243,353 | 253,535 |
| Reimbursements | -- | -- | -- | 54,773 | 54,773 |
| Contributions and donations | -- | -- | -- | 55,846 | 55,846 |
| Miscellaneous | 861,803 | -- | -- | 115,278 | 977,081 |
| Total revenues | 52,363,732 | 114,656 | 427,334 | 12,962,307 | 65,868,029 |
| **EXPENDITURES:** | | | | | |
| Current: | | | | | |
| General government | 11,274,642 | -- | -- | 17,064 | 11,291,706 |
| Public safety | 26,666,833 | -- | -- | 1,007,034 | 27,673,867 |
| Streets and transportation | 5,983,320 | -- | -- | 9,578 | 5,992,898 |
| Health and sanitation | 2,956,287 | -- | -- | 1,047,241 | 4,003,528 |
| Administrative and general | -- | -- | -- | 13,806 | 13,806 |
| Culture and recreation | 4,295,031 | -- | -- | 36,740 | 4,331,771 |
| Social services | 547,784 | -- | -- | 231,508 | 779,292 |
| Capital projects | -- | -- | -- | 4,871,264 | 4,871,264 |
| Economic development | -- | -- | 427,334 | 4,455,237 | 4,882,571 |
| Debt service: | | | | | |
| Principal | -- | -- | -- | 1,740,766 | 1,740,766 |
| Interest | -- | -- | -- | 879,354 | 879,354 |
| Total expenditures | 51,723,897 | -- | 427,334 | 14,309,592 | 66,460,823 |
| Excess (deficiency) of revenues over (under) expenditures | 639,835 | 114,656 | -- | ( 1,347,285) | ( 592,794) |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES -
GOVERNMENTAL FUNDS
For the Fiscal Year Ended June 30, 2003

| | General | Coal Severance Tax | HOME | Other nonmajor Governmental Funds | Total Governmental Funds |
|---|---|---|---|---|---|
| **OTHER FINANCING SOURCES (USES)** | | | | | |
| Transfers in | $ 3,154,722 | $ -- | $ -- | $ 3,654,525 | $ 6,809,247 |
| Transfers (out) | ( 4,430,399) | ( 88,118) | -- | ( 4,101,303) | ( 8,619,820) |
| Contributions | -- | -- | -- | ( 26,014) | ( 26,014) |
| Proceeds from the sale of assets | 101,114 | -- | -- | -- | 101,114 |
| Capital leases | 1,000,000 | -- | -- | -- | 1,000,000 |
| Total other financing sources (uses) | ( 174,563) | ( 88,118) | -- | ( 472,792) | ( 735,473) |
| Excess (deficiency) of revenues and other financing | | | | | |
| Net change in fund balances | 465,272 | 26,538 | -- | ( 1,820,077) | ( 1,328,267) |
| Fund balances - beginning, as restated, (Note IV.J) | 11,090,729 | 2,640 | ( 938) | 10,411,018 | 21,503,449 |
| Fund balances - ending | $ 11,556,001 | $ 29,178 | $ ( 938) | $ 8,590,941 | $ 20,175,182 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES
For the Fiscal Year Ended June 30, 2003

Amounts reported for governmental activities in the statement of activities are different because:

| | | |
|---|---|---|
| Net change in fund balances - total governmental funds | $ | ( 1,328,267) |
| Governmental funds report capital outlays as expenditures. However in the statement of activities the costs of those assets is allocated over their estimated useful lives and reported as depreciation expense. This is the amount by which capital outlays exceeded depreciation in the current period (Note II.B). | | 4,180,135 |
| The net effect of various miscellaneous transactions involving capital assets (i.e., sales, trade-ins, and donations) is to increase net assets(Note II.B). | | 13,937 |
| Revenues in the statement of activities that do not provide current financial resources are not reported as revenues in the funds. | | 90,248 |
| The issuance of long term debt(e.g., bonds, leases) provides current financial resources to governmental funds, while the repayment of the principal of long-term debt consumes the current financial resources of governmental funds. Neither transaction, however, has any effect on net assets. Also, governmental funds report the effect of issuance costs, premiums, discounts, and similar items when debt is first issued, whereas these amounts are deferred and amortized in the statement of activities. This amount is the net effect of these differences in the treatment of long-term debt and related items (Note II.B). | | 637,474 |
| Some expenses reported in the statement of activities do not require the use of current financial resources and, therefore, are not reported as expenditures in governmental funds(Note II.B). | | ( 5,661,010) |
| Change in net assets of governmental activities | $ | ( 2,067,483) |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES
IN FUND BALANCE - BUDGET AND ACTUAL - GENERAL FUND
For the Fiscal Year Ended June 30, 2003

| | Budgeted Amounts | | | Variance with Final Budget |
|---|---|---|---|---|
| | Original | Final | Actual Amounts | Positive (Negative) |
| **REVENUES** | | | | |
| Taxes: | | | | |
| Ad valorem property taxes | $ 8,350,000 | $ 8,350,000 | $ 8,306,280 | $ ( 43,720) |
| Business & occupation tax | 29,500,000 | 30,253,761 | 31,538,581 | 1,284,820 |
| Alcoholic beverages tax | 500,000 | 500,000 | 371,664 | ( 128,336) |
| Utility services tax | 2,000,000 | 2,000,000 | 1,828,767 | ( 171,233) |
| Hotel occupancy tax | 1,000,000 | 1,000,000 | 1,042,551 | 42,551 |
| Amusement tax | 100,000 | 100,000 | 264,742 | 164,742 |
| Other taxes | 16,000 | 16,000 | 22,905 | 6,905 |
| Licenses and permits | 1,220,500 | 1,220,500 | 1,300,538 | 80,038 |
| Intergovernmental: | | | | |
| Federal | -- | -- | 748,846 | 748,846 |
| State | 740,000 | 1,152,018 | -- | ( 1,152,018) |
| Charges for services | 6,097,000 | 6,097,000 | 5,983,518 | ( 113,482) |
| Fines and forfeits | -- | -- | 2,240 | 2,240 |
| Miscellaneous | 666,000 | 901,522 | 861,803 | ( 39,719) |
| Total revenues | 50,189,500 | 51,590,801 | 52,282,435 | 691,634 |
| **EXPENDITURES** | | | | |
| Current: | | | | |
| General government | 10,569,604 | 12,902,984 | 11,274,642 | 1,628,342 |
| Public safety | 26,646,057 | 27,280,576 | 26,666,833 | 613,743 |
| Streets and transportation | 5,738,784 | 6,145,006 | 5,983,320 | 161,686 |
| Health and sanitation | 3,167,027 | 3,177,176 | 2,956,287 | 220,889 |
| Culture and recreation | 4,151,181 | 4,499,425 | 4,295,031 | 204,394 |
| Social services | 650,359 | 662,476 | 547,784 | 114,692 |
| Total expenditures | 50,923,012 | 54,667,643 | 51,723,897 | 2,943,746 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES
IN FUND BALANCE - BUDGET AND ACTUAL - GENERAL FUND
For the Fiscal Year Ended June 30, 2003

| | Budgeted Amounts | | | Variance with Final Budget |
|---|---|---|---|---|
| | Original | Final | Actual Amounts | Positive (Negative) |
| Excess (deficiency) of revenues over (under) expenditures | $ ( 733,512) | $ ( 3,076,842) | $ 558,538 | $ 3,635,380 |
| **OTHER FINANCING SOURCES (USES)** | | | | |
| Transfers in | 2,200,000 | 3,131,603 | 3,154,722 | 23,119 |
| Transfers (out) | ( 2,266,488) | ( 4,464,024) | ( 4,430,399) | 33,625 |
| Proceeds from the sale of assets | 50,000 | 50,000 | 101,114 | 51,114 |
| Capital leases | - - | 1,000,000 | 1,000,000 | - - |
| Total other financing sources (uses) | ( 16,488) | ( 282,421) | ( 174,563) | 107,858 |
| Net change in fund balance | ( 750,000) | ( 3,359,263) | 383,975 | 3,743,238 |
| Fund balances - beginning, as restated, (Note IV.J) | 750,000 | 3,359,263 | 3,359,263 | - - |
| Fund balances - ending | $ - - | $ - - | $ 3,743,238 | $ 3,743,238 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES
IN FUND BALANCE - BUDGET AND ACTUAL - COAL SEVERANCE TAX FUND
For the Fiscal Year Ended June 30, 2003

| | Budgeted Amounts | | | Variance with Final Budget |
|---|---|---|---|---|
| | Original | Final | Actual Amounts | Positive (Negative) |
| **REVENUES** | | | | |
| Taxes: | | | | |
| Intergovernmental: | | | | |
| State | $ 120,000 | $ 120,000 | $ 114,591 | $ ( 5,409) |
| Interest and investment earnings | -- | -- | 65 | 65 |
| Total revenues | 120,000 | 120,000 | 114,656 | ( 5,344) |
| Excess (deficiency) of revenues over (under) expenditures | 120,000 | 120,000 | 114,656 | ( 5,344) |
| **OTHER FINANCING SOURCES (USES)** | | | | |
| Transfers (out) | ( 120,000) | ( 120,000) | ( 88,118) | 31,882 |
| Total other financing sources (uses) | ( 120,000) | ( 120,000) | ( 88,118) | 31,882 |
| Net change in fund balance | -- | -- | 26,538 | 26,538 |
| Fund balances - beginning | -- | -- | 2,640 | 2,640 |
| Fund balances - ending | $ -- | $ -- | $ 29,178 | $ 29,178 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF NET ASSETS - PROPRIETARY FUNDS
June 30, 2003

| | Business-type Activities - Enterprise Funds | | |
|---|---|---|---|
| | Civic Center | Parking System | Totals |
| **ASSETS** | | | |
| Current: | | | |
| Cash and cash equivalents | $ 65,140 | $ 92,158 | $ 157,298 |
| Receivables - net: | | | |
| Accounts | -- | 94,518 | 94,518 |
| Due from: | | | |
| Other funds | 141 | 394,476 | 394,617 |
| Prepaid expenses | 42,337 | 95,259 | 137,596 |
| Total current assets | 107,618 | 676,411 | 784,029 |
| Restricted: | | | |
| Regular account | 322,241 | 2,068,287 | 2,390,528 |
| Renewal and replacement | -- | 1,228,491 | 1,228,491 |
| Reserve for construction | 91,014 | -- | 91,014 |
| Total restricted assets | 413,255 | 3,296,778 | 3,710,033 |
| Capital assets: | | | |
| Land | 300,000 | 2,805,936 | 3,105,936 |
| Buildings | 35,213,848 | 25,107,822 | 60,321,670 |
| Machinery and equipment | 516,553 | 883,262 | 1,399,815 |
| Construction in progress | -- | 844,921 | 844,921 |
| Less: accumulated depreciation | ( 18,759,130) | ( 16,840,226) | ( 35,599,356) |
| Total capital assets (net of accumulated depreciation) | 17,271,271 | 12,801,715 | 30,072,986 |
| Total assets | $ 17,792,144 | $ 16,774,904 | $ 34,567,048 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF NET ASSETS - PROPRIETARY FUNDS
June 30, 2003

| | Business-type Activities - Enterprise Funds | | |
|---|---|---|---|
| | Civic Center | Parking System | Totals |
| **LIABILITIES** | | | |
| Current liabilities payable from current assets: | | | |
| Accounts payable | $ 59,259 | $ 14,706 | $ 73,965 |
| Payroll payable | 36,508 | 36,876 | 73,384 |
| Other accrued expenses | 18,987 | 22,682 | 41,669 |
| Leases payable | 5,971 | 23,012 | 28,983 |
| Compensated absences payable | 36,671 | 31,850 | 68,521 |
| Due to: | | | |
| Other funds | 173,069 | 441,661 | 614,730 |
| Total current liabilities payable from current assets | 330,465 | 570,787 | 901,252 |
| Current liabilities payable from restricted assets: | | | |
| Revenue bonds payable | 220,000 | 655,000 | 875,000 |
| Accrued revenue bond interest payable | 82,761 | 69,458 | 152,219 |
| Customer deposits | 43,493 | -- | 43,493 |
| Total current liabilities payable from restricted assets | 346,254 | 724,458 | 1,070,712 |
| Deferred revenues: | | | |
| Charges for services | -- | 835 | 835 |
| Total deferred revenues | -- | 835 | 835 |
| Noncurrent liabilities: | | | |
| Bonds payable | 8,053,628 | 11,484,475 | 19,538,103 |
| Leases payable | 9,275 | 45,495 | 54,770 |
| Total noncurrent liabilities | 8,062,903 | 11,529,970 | 19,592,873 |
| Total liabilities | 8,739,622 | 12,826,050 | 21,565,672 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF NET ASSETS - PROPRIETARY FUNDS
June 30, 2003

| | Business-type Activities - Enterprise Funds | | |
|---|---|---|---|
| | Civic Center | Parking System | Totals |
| **NET ASSETS** | | | |
| Invested in capital assets (net of related debt) | $ 8,982,397 | $ 593,733 | $ 9,576,130 |
| Restricted for debt service | 413,255 | 3,296,778 | 3,710,033 |
| Unrestricted | ( 343,130) | 58,343 | ( 284,787) |
| Total net assets | $ 9,052,522 | $ 3,948,854 | $ 13,001,376 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF REVENUES, EXPENSES AND
CHANGES IN FUND NET ASSETS - PROPRIETARY FUNDS
For the Fiscal Year Ended June 30, 2003

| | Business-type Activities - Enterprise Funds | | |
|---|---|---|---|
| | Civic Center | Parking System | Totals |
| Operating revenues: | | | |
| Sales and services to customers | $ 1,316,251 | $ 2,727,030 | $ 4,043,281 |
| Rents | 900,274 | -- | 900,274 |
| Miscellaneous | 5,253 | 16,472 | 21,725 |
| Total revenues | 2,221,778 | 2,743,502 | 4,965,280 |
| Operating Expenses: | | | |
| Administrative and general | -- | 1,524,145 | 1,524,145 |
| Recreation | 2,403,291 | -- | 2,403,291 |
| Depreciation | 770,053 | 973,114 | 1,743,167 |
| Total operating expenses | 3,173,344 | 2,497,259 | 5,670,603 |
| Operating income (loss) | ( 951,566) | 246,243 | ( 705,323) |
| Nonoperating revenues (expenses): | | | |
| Interest revenue | 8,719 | 104,234 | 112,953 |
| Gain (loss) on sale of fixed assets | -- | ( 2,947) | ( 2,947) |
| Interest and fiscal charges | ( 530,539) | ( 1,103,879) | ( 1,634,418) |
| Total nonoperating revenues (expenses) | ( 521,820) | ( 1,002,592) | ( 1,524,412) |
| Income (loss) before operating transfers | ( 1,473,386) | ( 756,349) | ( 2,229,735) |
| Transfers in | 1,121,074 | 786,000 | 1,907,074 |
| Transfers(out) | ( 96,501) | -- | ( 96,501) |
| Change in net assets | ( 448,813) | 29,651 | ( 419,162) |
| Net assets at beginning of year | 9,501,335 | 3,919,203 | 13,420,538 |
| Net assets at end of year | $ 9,052,522 | $ 3,948,854 | $ 13,001,376 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF CASH FLOWS- PROPRIETARY FUNDS
For the Fiscal Year Ended June 30, 2003

| | Business-type Activities - Enterprise Funds | | |
|---|---|---|---|
| | Civic Center | Parking System | Totals |
| **Cash flows from operating activities:** | | | |
| Cash received from customers | $ 2,175,015 | $ 2,625,173 | $ 4,800,188 |
| Cash paid for goods and services | ( 1,662,534) | ( 303,249) | ( 1,965,783) |
| Cash paid to employees | ( 890,563) | ( 1,009,614) | ( 1,900,177) |
| Net cash provided (used) by operating activities | ( 378,082) | 1,312,310 | 934,228 |
| **Cash flows from noncapital financing activities:** | | | |
| Transfers in | 388,312 | - - | 388,312 |
| Net cash provided (used) by noncapital financing activities | 388,312 | - - | 388,312 |
| **Cash flows from capital and related financing activities:** | | | |
| Proceeds from capital debt | - - | 73,643 | 73,643 |
| Purchases of capital assets | ( 200,058) | ( 889,038) | ( 1,089,096) |
| Principal paid on capital debt | ( 215,650) | ( 667,004) | ( 882,654) |
| Interest paid on capital debt | ( 514,651) | ( 1,022,022) | ( 1,536,673) |
| Cash transfers for capital projects | 641,514 | 786,000 | 1,427,514 |
| Net cash provided (used) by capital and related financing activities | ( 288,845) | ( 1,718,421) | ( 2,007,266) |
| **Cash flows from investing activities:** | | | |
| Interest received | 8,719 | 104,234 | 112,953 |
| Net cash provided (used) by investing activities | 8,719 | 104,234 | 112,953 |
| Net increase (decrease) in cash and cash equivalents | ( 269,896) | ( 301,877) | ( 571,773) |
| Cash and cash equivalents, July 1, (including $478,237 and $3,409,574 in restricted accounts) | 657,277 | 3,690,813 | 4,348,090 |
| Cash and cash equivalents, June 30, (including $322,241 and $3,296,778 in restricted accounts) | $ 387,381 | $ 3,388,936 | $ 3,776,317 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF CASH FLOWS- PROPRIETARY FUNDS
For the Fiscal Year Ended June 30, 2003

| | Business-type Activities - Enterprise Funds | | |
|---|---|---|---|
| | Civic Center | Parking System | Totals |
| **Reconciliation of operating income(loss) to net cash provided (used) by operating activities:** | | | |
| Operating income (loss) | $ ( 951,566) | $ 246,243 | $ ( 705,323) |
| Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities: | | | |
| Depreciation expense | 770,053 | 973,114 | 1,743,167 |
| Bad debt expense | - - | ( 285) | ( 285) |
| Decrease (increase) in accounts receivable | 306 | 25,337 | 25,643 |
| Decrease (increase) in restricted deposits | ( 41,784) | - - | ( 41,784) |
| Decrease (increase) in due from other funds | ( 32) | ( 142,133) | ( 142,165) |
| Decrease (increase) in prepaid expenses | ( 698) | 30 | ( 668) |
| Increase (decrease) in customer deposits | 24,148 | - - | 24,148 |
| Increase (decrease) in accounts payable | ( 141,823) | ( 24,714) | ( 166,537) |
| Increase (decrease) in due to other funds | ( 54,164) | 223,276 | 169,112 |
| Increase (decrease) in payroll payable | 8,283 | 4,952 | 13,235 |
| Increase (decrease) in other accrued expenses | 9,195 | 6,490 | 15,685 |
| Net cash provided by operations | $ ( 378,082) | $ 1,312,310 | $ 934,228 |
| **Noncash investing, capital, and financing activities:** | | | |
| Interest paid | $ 510,855 | $ 871,805 | $ 1,382,660 |
| Borrowing under capital leases | | $ 70,000 | $ 70,000 |
| Loss from replacement of capital asset | | $ 2,947 | $ 2,947 |

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF FIDUCIARY NET ASSETS
FIDUCIARY FUNDS
June 30, 2003

| | Pension Trust Funds | Agency Funds |
|---|---|---|
| **ASSETS** | | |
| Non-pooled cash | $ 4,497,756 | $ 674,051 |
| Total cash | 4,497,756 | 674,051 |
| Investments, at fair value: | | |
| Federal government securities | 4,377,032 | -- |
| Managed bond funds | 8,534,124 | -- |
| Managed stock funds | 2,790,104 | -- |
| Other investments | -- | 496,830 |
| Total investments | 15,701,260 | 496,830 |
| Receivables: | | |
| Interest receivable | 113,774 | -- |
| Mortgage loans receivable | 7,900 | -- |
| Total receivables | 121,674 | -- |
| Total assets | $ 20,320,690 | $ 1,170,881 |
| **LIABILITIES** | | |
| Accounts payable | 14,130 | 1,170,881 |
| Refunds payable | 335,081 | -- |
| Total liabilities | 349,211 | 1,170,881 |
| **NET ASSETS** | | |
| Net assets held in trust for pension benefits | $ 19,971,479 | $ -- |

(1) A schedule of funding progress for each plan is presented in the Required Supplementary Information section of this report.

The notes to the financial statements are an integral part of this statement

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
STATEMENT OF CHANGES IN FIDUCIARY NET ASSETS
FIDUCIARY FUNDS
For the Fiscal Year Ended June 30, 2003

| | Fiduciary Fund Type Pension Trust Funds |
|---|---|
| **ADDITIONS** | |
| Contributions: | |
| Employer | $ 3,263,326 |
| Plan members | 998,193 |
| Insurance premium surtax | 2,152,179 |
| Total contributions | 6,413,698 |
| Investment income: | |
| Net increase(decrease) in fair value of investments | 459,225 |
| Interest and dividends | 750,113 |
| Less: investment expense | ( 61,512) |
| Net investment income | 1,147,826 |
| Total additions | 7,561,524 |
| **DEDUCTIONS** | |
| Benefits | 7,479,590 |
| Administrative expenses | 38,535 |
| Refunds of contributions | 55,916 |
| Total deductions | 7,574,041 |
| Change in net assets | ( 12,517) |
| Net assets held in trust for pension benefits: | |
| Beginning of year | 19,983,996 |
| End of year | $ 19,971,479 |

The notes to the financial statements are an integral part of this statement

## I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accounting policies of the Municipality of Charleston, West Virginia, conform to generally accepted accounting principles as applicable to governmental units. The following is a summary of significant accounting policies:

### A. Reporting Entity

The City of Charleston is a municipal corporation governed by an elected mayor and twenty-seven member council. The accompanying financial statements present the government and its component units as required by generally accepted accounting principles. Blended component units, although legally separate entities, are, in substance, part of the government's operations. The discretely presented component unit is reported in a separate column in the government-wide financial statements (see note below for description) to emphasize that it is legally separate from the government.

*Blended Component Unit*
The Charleston Building Commission serves the residents of the Municipality of Charleston, West Virginia, and is governed by a board comprised of five members appointed by council for a term of five years each.

*Discretely Presented Component Unit*

The Charleston Sanitary Board serves all citizens of the Municipality of Charleston and is governed by a three member board comprised of the Mayor and two members of council. The rates for user charges and bond issuance authorizations are approved by the government's elected council. The Sanitary Board is reported as an enterprise fund.

Complete financial statements for each of the individual component units can be obtained at the entity's administrative offices.

### B. Government-Wide and Fund Financial Statements

The government-wide financial statements (i.e., the statement of net assets and the statement of changes in net assets) report information on all of the nonfiduciary activities of the primary government and its component units. For the most part, the effect of interfund activity has been removed from these statements. Governmental activities, which normally are supported by taxes and intergovernmental revenues, are reported separately from business-type activities, which rely to a significant extent on fees and charges for support. Likewise, the primary government is reported separately from certain legally separate component units for which the primary government is financially accountable.

The statement of activities demonstrates the degree to which the direct expenses of a given function are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function. Program revenues include 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Separate financial statements are provided for governmental funds, proprietary funds, and fiduciary funds, even though the latter are excluded from the government-wide financial statements. Major individual governmental funds and major individual enterprise funds are reported as separate columns in the fund financial statements. Combining financial statements for the nonmajor governmental funds are included as supplementary information.

C. Measurement focus, basis of accounting, and financial statement presentation

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting, as are the proprietary fund and fiduciary fund financial statements. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year for which they are levied. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the government considers revenues to be available if they are collected within 60 days of the end of the current fiscal period. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures, as well as expenditures related to compensated absences and claims and judgments, are recorded only when payment is due.

Property taxes, franchise taxes, interest and special assessments are susceptible to accrual. Also, in accordance with Governmental Accounting Standards Board Statement No. 22 as amended by Governmental Accounting Standards Board Statement No. 33, certain taxpayer-assessed revenues such as business and occupation and utility taxes are also accrued as revenue at year end. Only the portion of special assessments receivable due within the current fiscal period is considered to be susceptible to accrual as revenue of the current period. Other receipts and taxes become measurable and available when cash is received by the government and are recognized as revenue at that time.

Entitlements and shared revenues are recorded at the time of receipt or earlier if the susceptible to accrual criteria are met. Expenditure-driven grants are recognized as revenue when the qualifying expenditures have been incurred and all other grant requirements have been met.

The government reports the following major governmental funds:

The *General fund* is the government's primary operating fund. It accounts for all financial sources of the general government, except those required to be accounted for in another fund.

The *Coal Severance Tax fund*, a special revenue fund, accounts for revenues and expenditures from a severance tax placed on coal that are distributed to West Virginia municipalities. The State Auditor's Office requires an annual budget be submitted for approval for this fund. A restriction on the fund is that no more than 25% of the revenues can be spent for personal services. A resolution was adopted by council dedicating all of this fund's receipts be utilized for the payment of debt service of the 1998 Civic Center Revenue Bonds.

The *HOME fund*, a special revenue fund, accounts for federal grants received from HUD for the purpose of providing loans to low to moderate income recipients to purchase homes.

The government reports the following major proprietary funds:

The *Civic Center fund* is a large multipurpose meeting, convention and entertainment facility. The Civic Center/Auditorium Board was created in 1953 to supervise, operate and maintain the Civic Center and the Municipal Auditorium. The board is appointed by the mayor with the approval of City Council. This fund accounts for the receipts and expenses of the operations of this facility.

The *Parking System fund* consists of parking buildings, parking lots and metered spaces. The City has delegated a special committee of the Council, designated as the Parking Facilities Committee composed of the mayor and members of the finance committee of council, to promulgate rules and regulations governing the usage of all the parking facilities. This fund accounts for all receipts and expenses of operating the parking system.

Additionally, the government reports the following fund types:

The *pension trust funds* account for the activities of the Public Safety Employees Retirement System, which accumulates resources for pension benefit payments to qualified public safety employees. These funds are accounted for in essentially the same manner as the proprietary funds, using the same measurement focus and basis of accounting.

The *agency funds* are custodial in nature (assets equal liabilities) and do not present results of operations or have a measurement focus. Agency funds are accounted for using the modified accrual basis of accounting. These funds are used to account for assets that the Municipality of Charleston, West Virginia holds for others in an agency capacity.

The Municipality of Charleston, West Virginia follows GASB guidance as applicable to proprietary funds and FASB Statements and Interpretations, Accounting Principles Board Opinions and Accounting Research Bulletins issued on or before November 30, 1989 that do not conflict with GASB Pronouncements in both the government-wide and proprietary fund financial statements.

As a general rule the effect of interfund activity has been eliminated from the government-wide financial statements.

Amounts reported as program revenues include 1) charges to customers or applicants for goods, services, or privileges provided, 2) operating grants and contributions, and 3) capital grants and contributions, including special assessments. Internally dedicated resources are reported as general revenues rather than program revenues. Likewise, general revenues include all taxes.

Proprietary funds distinguish operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from providing services in connection with a proprietary fund's principal ongoing operations. The principal operating revenue of the Civic Center and Parking System (enterprise funds) and the Sanitary Board( a discretely presented component unit) are charges to customers for services. Operating expenses for the enterprise funds include the cost of services, administrative expenses, and depreciation of capital assets. All revenues and expenses not meeting this definition are reported as nonoperating revenues and expenses.

## D. Assets, Liabilities, and Net Assets or Equity

### 1. Deposits and Investments

The Municipality of Charleston, West Virginia's cash and cash equivalents are considered to be cash on hand, demand deposits and short term investments with original maturities of less than three months from the date of acquisition. For purposes of the Statement of Cash Flows, restricted assets may be considered cash equivalents based on liquidity.

In accordance with GASB Statement No. 31, "Accounting and Financial Reporting for Certain Investments and for External Investment Pools", the Municipality reports its investments at fair value, except for non-participating investment contracts (certificates of deposit and repurchase agreements) which are reported at cost, which approximates fair value. All investment income, including changes in fair value of investments, are recognized as revenue in the operating statement. Fair value is determined by quoted market prices.

Short-term investments are reported at cost, which approximates fair value. Securities traded on a national or international exchange are valued at the last reported sales price at current exchange rates. Managed funds related to the retirement systems not listed on an established market are reported at estimated fair value as determined by the respective fund managers based on quoted sales prices of underlying securities. Cash deposits are reported at carrying amount which reasonably estimates fair value. The composition of investments and fair values are presented in Note IV.A.

State statutes authorize the government to invest in the State Investment Pool or the Municipal Bond Commission or to invest such funds in the following classes of securities: Obligations of the United States or any agency thereof, certificates of deposit (which mature in less than one year), general and direct obligations of the state of West Virginia; obligations of the federal mortgage association; indebtedness secured by first lien deed of trusts for property situated within this state if the payment is substantially insured or guaranteed by the federal government; pooled mortgage trusts (subject to limitations); indebtedness of any private corporation that is properly graded as in the top two or three highest rating grades; interest earning deposits which are fully insured or collateralized; and mutual funds registered with S.E.C. which have fund assets over three hundred million dollars.

State statute limitations concerning the aforementioned investments include the following: at no time can investment portfolios consist of more than seventy-five percent of the indebtedness of any private corporation nor can the portfolio have over twenty-five percent of its portfolio consisting of the indebtedness of a private corporation's debt which matures in less than one year; at no time may more than nine percent of the portfolio be invested in securities issued by a single private corporation or association; and at no time can more than sixty percent of the portfolio be invested in equity mutual funds.

Municipal Pension Funds are governed as to type of investments by *West Virginia Code 8-22-22.* Pension funds are permitted to invest in all of the above mentioned types of investments with the exceptions of (1) Direct and general obligations of the state and (2) Pooled mortgage trusts. Additionally, pension funds are permitted to invest funds in the following categories of investments: (1) Repurchase agreements and (2) Common stock, securities convertible into common stocks, or warrants and rights to purchase such securities. Pension funds have different rules concerning the purchase of marketable debt securities.

The following restrictions apply only to pension portfolios and are separate and distinct from the limitations mentioned above: (1) fixed income securities which are issued by one issuer (with the exception of the United States government) are not to exceed ten percent of the total assets of the total pension fund assets; and (2) at no time can the equity portion of the portfolio exceed fifty percent of the total portfolio.

**2. Receivables and Payables**

*Interfund Transactions*

Activity between funds that are representative of lending/borrowing arrangements outstanding at the end of the fiscal year are referred to as either "interfund receivables or payables" (i.e., the current portion of interfund loans) or "advances to/from other funds" (i.e., the non-current portion of interfund loans). All other outstanding balances between funds are reported as "due to/from other funds." Any residual balance outstanding between the governmental activities and the business-type activities are reported in the government-wide financial statements as "internal balances".

*Trade Receivables*

All trade receivables are shown at their gross value and, where appropriate, are reduced by the estimated portion that is expected to be uncollectible.

*Property Tax Receivable*

The property tax receivable is equal to ten percent of the property taxes outstanding at June 30, 2003.

All current taxes assessed on real and personal property may be paid in two installments; the first installment is payable on September first of the year for which the assessment is made, and becomes delinquent on October first; the second installment is payable on the first day the following March and becomes delinquent on April first. Taxes paid on or before the date when they are payable, including both first and second installments, are subject to a discount of two and one-half percent. If the taxes are not paid on or before the date in which they become delinquent, including both first and second installments, interest at the rate of nine percent per annum is added from the date they become delinquent until the date they are paid.

All municipalities within the state are authorized to levy taxes not in excess of the following maximum levies per $100 of assessed valuation: On Class I property, twelve and five-tenths cents (12.5 cents); On Class II property, twenty-five cents (25 cents); On Class IV property, fifty cents (50 cents). In addition, municipalities may provide for an election to lay an excess levy; the rates not to exceed statutory limitations, provided at least sixty percent of the voters cast ballots in favor of the excess levy.

The rates levied by the municipality per $100 of assessed valuation for each class of property for the fiscal year ended June 30, 2003, were as follows:

| Class of Property | Assessed Valuation For Tax Purposes | Current Expense | Excess Levy | Bond Purposes |
|---|---|---|---|---|
| Class I | $ 25,278,182 | 5.75 cents | 5.03 cents | 3.18 cents |
| Class II | $ 987,596,820 | 11.50 cents | 10.06 cents | 6.36 cents |
| Class IV | $ 1,467,028,420 | 23.00cents | 20.12 cents | 12.72 cents |

The Municipality of Charleston, West Virginia held a special election on December 4, 1999. The municipality was authorized to lay an excess levy to provide approximately $3,421,215 annually during the next three fiscal years ended June 30, 2001 through June 30, 2003, for the purpose of current governmental expenses.

### 3. Inventories and Prepaid Items

There are no material inventories maintained; therefore they do not appear on the financial statements. Certain payments to vendors reflect costs applicable to future accounting periods and are recorded as prepaid items.

### 4. Restricted Assets

Certain proceeds of the Civic Center and Parking System enterprise funds and the Sanitary Board, a discretely presented component unit, revenue bonds, as well as certain proceeds set aside for their repayment, are classified as restricted assets on the statement of net assets because their use is limited by applicable bond covenants.

The *restricted cash* and cash equivalents for governmental activities reports resources set aside for governmental activities of $1,028,153 for contingency purposes for the City of Charleston Landfill. The land is owned by the City, however, the operations are contracted by Waste Management, a subsidiary of USA Waste Management. These resources are held as required by the contract agreement between the parties for landfill closure and post closure cost in the event the contractor should default on the contract. The *restricted cash* is also comprised of $113,898 held for general obligation bond debt service.

The *regular account* is used to report resources accumulated for debt service payments over the next twelve months related to business type activities.

The *reserve for construction* is used to report those proceeds of revenue bonds that are restricted for use in construction.

The *renewal and replacement* is used to report resources set aside in accordance with bond covenants to meet unexpected contingencies or fund asset renewals and replacements.

## 5. Capital Assets and Depreciation

Capital assets, which include property, plant, equipment, and infrastructure assets (e.g., roads, bridges, sidewalks, and similar items), are reported in the applicable governmental or business-type activities columns in the government-wide financial statements. Capital assets are defined by the government as assets with an initial, individual cost of $5,000 or more and estimated to have a useful life in excess of one year. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed. Donated capital assets are recorded at estimated fair market value at the date of donation.

The costs of normal maintenance and repairs that do not add to the value of the assets or materially extend assets lives are not capitalized.

Major outlays for capital assets and improvements are capitalized in proprietary funds as projects are constructed. Interest incurred during the construction phase of proprietary fund capital assets is reflected in the capitalized value of the asset constructed, net of interest earned on the invested proceeds during the same period.

Property, plant, and equipment of the primary government, as well as the Sanitary Board component unit, is depreciated using the straight line method over the following estimated useful lives:

| Assets | Years |
|---|---|
| Buildings | 40 |
| System Infrastructure | 40-50 |
| Transmission and Distribution Equipment | 05-10 |
| Vehicles | 03-05 |
| Office and Computer Equipment | 05 |

## 6. Compensated Absences

It is the government's policy to permit employees to accumulate earned but unused vacation and sick pay benefits. All vacation pay is accrued when incurred in the government-wide, proprietary, and fiduciary fund financial statements in accordance with GASB Statement No. 16, Accounting for Compensated Absences.

When a permanent full time employee retires, the employee may elect to have any accrued sick leave converted to insurance benefits based on the formula of two days sick leave for one month single coverage insurance premium or three days sick leave for one month family coverage insurance premium. A liability has been accrued for all employees who have actually retired at June 30, 2003, converted accrued sick leave to insurance premiums, and the actual costs to the City has been calculated.

## 7. Long-Term Obligations

In the government-wide financial statements, and proprietary fund types in the fund financial statements, long-term debt and other long-term obligations are reported as liabilities in the applicable governmental activities, business-type activities, or proprietary fund type statement of net assets. Bond premiums and discounts, as well as issuance costs, are deferred and amortized over the life of the bonds using the effective interest method. Bonds payable are reported net of the applicable bond premium or discount. Bond issuance costs are reported as deferred charges and amortized over the term of the related debt.

In the fund financial statements, governmental fund types recognize bond premiums and discounts, as well as bond issuance costs, during the current period. The face amount of debt issued is reported as other financing sources. Premiums received on debt issuances are reported as other financing sources while discounts on debt issuances are reported as other financing uses. Issuance costs, whether or not withheld from the actual debt proceeds received, are reported as debt service expenditures.

### 8. Fund Equity

In the fund financial statements, governmental funds report reservations of fund balance for amounts that are not available for appropriation or are legally restricted by outside parties for use for a specific purpose. Designations of fund balance represent tentative management plans that are subject to change.

Contributed capital is not subject to repayment and primarily represents assets contributed to Proprietary Funds by other city funds and donations. It also includes grants that are restricted for Proprietary Fund capital acquisitions, and assets acquired through general government resources. These assets are recorded at fair value on the date contributed.

GASB 34 eliminates the use of contributed capital and reclassifies the contributed capital to retained earnings as of the effective date of the reporting model. All contributed capital received after the effective date is recorded as revenues.

## II. RECONCILIATION OF GOVERNMENT-WIDE AND FUND FINANCIAL STATEMENTS

### A. Explanation of Certain Differences Between the Governmental Fund Balance Sheet and the Government-wide Statement of Net Assets

The governmental fund balance sheet includes a reconciliation between fund balance total governmental funds and net assets-governmental activities as reported in the government-wide statement of net assets. One element of that reconciliation explains that "long-term liabilities, including bonds payable, are not due and payable in the current period and therefore are not reported in the funds." The details of this $43,349,766 difference are as follows:

| | | |
|---|---|---|
| Bonds payable: | $ | 13,049,694 |
| Less: issuance cost (to be amortized as interest expense) | | (26,421) |
| Accrued interest payable | | 944,313 |
| Capital leases payable | | 3,483,972 |
| Claims and judgments | | 3,401,529 |
| Compensated absences | | 1,437,259 |
| Net pension obligation | | 21,059,420 |
| Net adjustment to decrease fund balance-total governmental funds to arrive at net assets-governmental activities | $ | 43,349,766 |

**B. Explanation of Certain Differences Between the Governmental Fund Statement of Revenues, Expenditures, and Changes in Fund Balance and the Government-wide Statement of Activities**

The governmental fund statement of revenues, expenditures, and changes in fund balances includes a reconciliation between net changes in fund balances-total governmental funds and changes in net assets of governmental activities as reported in the government-wide statement of activities. One element of that reconciliation explains that "Governmental funds report capital outlays as expenditures. However, in the Statement of Activities the cost of those assets are allocated over their estimated useful lives and reported as depreciation expense. This is the amount that capital outlays exceeded depreciation for the current period". The details of the $4,180,135 difference are as follows:

| | |
|---|---|
| Capital outlays | $ 10,497,889 |
| Depreciation expense | (6,317,754) |
| Net adjustment to increase net change in fund balance-total governmental funds to arrive at changes in net assets of governmental activities | $ 4,180,135 |

Another element of that reconciliation states that "The net effect of various miscellaneous transactions involving capital assets (i.e. sales, trade-ins, and donations) is to increase net assets". The details of this $13,937 difference are as follows:

| | |
|---|---|
| Donations of capital assets increase net assets in the statement of activities, but do not appear in the governmental funds because they are not financial resources | $ 14,800 |
| In the statement of activities, only the gain on the sale of capital assets is reported. However, in the governmental funds, the proceeds from the sale increase financial resources. Thus, the change in net assets differs from the change in fund balance by the cost of the capital asset sold. | (863) |
| Net adjustment to increase net change in fund balance-total governmental funds to arrive at changes in net assets of governmental activities | $ 13,937 |

Another element of that reconciliation states that "The issuance of long-term debt (i.e. bonds, leases) provide current financial resources to governmental funds, while the repayment of the principal of long-term debt consumes the current financial resources of governmental funds. Neither transaction, however, has any effect on net assets. Also, governmental funds report the effect of issuance costs, premiums, discounts and similar items when debt is first issued, whereas, these amounts are deferred and amortized in the statement of activities". The details of this $637,474 difference are as follows:

| | |
|---|---|
| Debt issued or incurred: | |
| Capital lease financing | $ (1,000,000) |
| Additional accrued interest expense | (24,931) |
| Principal repayments: | |
| General obligation and revenue bonds | 1,740,766 |
| Additional accrued interest expense | (78,362) |
| Net adjustment to increase net changes in fund balances-total governmental funds to arrive at changes in net assets of governmental activities | $ 637,473 |

Another element of that reconciliation states that "Some expenses reported in the statement of activities do not require the use of current financial resources and, therefore, are not reported as expenditures in governmental funds". The details of this $5,661,010 difference are as follows:

| | |
|---|---|
| Compensated absences | $ 657,213 |
| Claims and judgments | 748,175 |
| Net pension obligation | 4,255,623 |
| Net adjustment to decrease net changes in fund balances-total governmental funds to arrive at changes in net assets of governmental activities | $ 5,661,011 |

## III. STEWARDSHIP, COMPLIANCE AND ACCOUNTABILITY

### A. Budgetary Information

Annual budgets are adopted on a basis consistent with generally accepted accounting principles for the General Fund and the Coal Severance Tax Special Revenue Fund, except that business and occupation taxes are not reported on the modified accrual basis for budgetary purposes. All annual appropriations lapse at fiscal year end.

The governing body of the municipality is required to hold a meeting or meetings between the seventh and twenty-eighth days of March to ascertain the financial condition of the Municipality and to prepare the levy estimate (budget) for the fiscal year commencing July 1. The budget is then forthwith submitted to the State Auditor for approval. The governing body then reconvenes on the third Tuesday in April to hear objections from the public and formally lay the levy.

The appropriated budget is prepared by fund, function and department. Transfers of appropriations between departments and revenue related revisions to the budget require approval from the governing council and then submission to the State Auditor for approval. Revisions become effective when approved by the State Auditor and budgeted amounts in the financial statements reflect only such approved amounts. The governing body made the following material supplementary budgetary appropriations throughout the year.

| Amount | Description |
|---|---|
| $ 2,333,380 | General Government Expenditure Increase |
| 634,519 | Public Safety Expenditure Increase |
| 406,222 | Streets and Transportation Expenditure Increase |
| 348,244 | Culture and Recreation Expenditure Increase |

Encumbrance accounting is not employed as an extension of the formal budgetary process. Encumbrances (e.g. purchase orders, contracts) should be reported as reservations of fund balance and do not constitute expenditures or liabilities because the commitments will be reappropriated and honored during the subsequent year.

A reconciliation from the budgetary basis to the GAAP Modified Accrual Fund Basis is due to the recording of business and occupation tax revenues on the cash basis for budgetary purposes and the accrual basis for GAAP purposes and is as follows:

| | Net Change in Fund Balance | Fund Balance |
|---|---|---|
| Budgetary Basis | $ 383,975 | $ 3,743,238 |
| Basis of Accounting Difference | 81,297 | 8,812,763 |
| GAAP Basis | $ 465,272 | $ 11,556,001 |

### B. Deficit Fund Equity

The Home Special Revenue and Department of Transportation Grants Special Revenue Funds had a deficit fund balance of $938 and $23,339, respectively, as of June 30, 2003. The HOME Fund is a HUD grant fund that loans monies to low to moderate income applicants for the purchase of homes. These deferred revenues are subject to write-off of amounts due, resulting in a deficit fund balance. The Department of Transportation Fund received and deposited grant funds that belonged to another City fund in error, thus resulting in an over expenditure when the error was discovered and the correct fund was reimbursed.

## IV. DETAILED NOTES ON ALL FUNDS

### A. Deposits and Investments

At year end, the government's carrying amount of deposits was $37,785,939 and the bank balances were $38,950,613. Of the bank balance, $200,000 was covered by federal depository insurance or by collateral held by the government's agent in the government's name (Category 1). Of the remaining balance, $38,750,613 was collateralized with securities held by the pledging financial institution's trust department or agent in the government's name (Category 1).

The bank balance for the Sanitary Board, a discretely presented component unit, was $3,368,215. Of the bank balance, $100,000 was covered by federal depository insurance for each depository.

Investments are categorized into these three categories of credit risk:

(1) Insured or registered, or securities held by the government or its agent in the government's name.
(2) Uninsured and unregistered, with securities held by the counterparty's trust department or agent in the government's name.
(3) Uninsured and unregistered, with securities held by the counterparty, or by its trust department or agent, but not in the government's name.

At year end the government's investment balances were as follows:

| | Category 1 | Category 3 | Carrying Amount | Fair Value |
|---|---|---|---|---|
| U.S. Government Securities | $ 4,377,033 | $ - | $ 4,377,033 | $ 4,377,033 |
| Commercial Paper | 2,520,541 | - | 2,520,541 | 2,520,541 |
| Corporate Bonds | 4,828,635 | - | 4,828,635 | 4,828,635 |
| Common Stock | - | 6,742,062 | 6,742,062 | 6,742,062 |
| Total | $ 11,726,209 | $ 6,742,062 | $ 18,468,271 | $ 18,468,271 |
| Investments not subject to categorization: | | | | |
| Municipal Bond Commission | | | 2,415,787.00 | 2,415,787.00 |
| Total Investments | | | $ 20,884,058 | $ 20,884,058 |

At year end, the Sanitary Board investment balances were as follows:

| | Category 1 | Carrying Amount | Fair Value |
|---|---|---|---|
| Commercial Paper | $ 527,247 | $ 527,247 | $ 527,247 |
| Total | $ 527,247 | $ 527,247 | $ 527,247 |
| Investments not subject to categorization: | | | |
| Municipal Bond Commission | | 2,404,800 | 2,404,800 |
| Total Investments | | $ 2,932,047 | $ 2,932,047 |

A reconciliation of cash and investments as shown on the Statement of Net Assets of the primary government is as follows:

| | |
|---|---|
| Carrying amount of cash and deposits | $ 16,937,882 |
| Carrying amount of investments | 20,884,058 |
| Total | $ 37,821,940 |
| | |
| Cash and cash equivalents | $ 16,937,882 |
| Cash and cash equivalents-restricted | 31,638 |
| Investments | 17,279,206 |
| Investments-restricted | 3,573,214 |
| Total | $ 37,821,940 |

A reconciliation of cash and investments as shown on the Balance Sheet of the Sanitary Board is as follows:

| | Sanitary Board |
|---|---|
| Carrying amount of cash and deposits | $ 2,340,377 |
| Carrying amount of investments | 2,932,047 |
| Total | $ 5,272,424 |
| | |
| Cash and cash equivalents | $ 2,340,377 |
| Investments-restricted | 2,932,047 |
| Total | $ 5,272,424 |

## B. Receivables

Receivables at year end for the government's individual major funds and nonmajor, and fiduciary funds in the aggregate, including applicable allowances for uncollectible accounts, are as follows:

| | General | HOME | Parking System | Nonmajor and Other Funds | Total |
|---|---|---|---|---|---|
| Receivables: | | | | | |
| Interest | $ - | $ - | $ - | $ 12,415 | $ 12,415 |
| Accounts | 9,412,009 | - | 116,018 | 432,751 | 9,960,778 |
| Loans | - | 2,466,881 | - | 1,799,783 | 4,266,664 |
| Grants | - | | - | 98,725 | 98,725 |
| Taxes | - | - | - | 91,897 | 91,897 |
| Intergovernmental | 16,808 | - | - | - | 16,808 |
| Gross Receivables | $ 9,428,817 | $ 2,466,881 | $ 116,018 | $ 2,435,571 | $ 14,447,287 |
| Less: Allowance for Uncollectables | (498,983) | - | (21,500) | - | (520,483) |
| Net Total Receivables | $ 8,929,834 | $ 2,466,881 | $ 94,518 | $ 2,435,571 | $ 13,926,804 |

Accounts Receivable for the Charleston Sanitary Board are $1,083,209 net of allowance for uncollectables of $116,000.

## C. Capital Assets

Capital Asset activity for the fiscal year ended June 30, 2003 was as follows:

| | Primary Government | | | |
|---|---|---|---|---|
| | Beginning Balance | Increases | Decreases | Ending Balance |
| **Governmental activities:** | | | | |
| Capital assets, not being depreciated: | | | | |
| Land | $ 2,733,373 | $ 170,254 | $ - | $ 2,903,627 |
| Construction in progress | 501,659 | 5,040,068 | (453,445) | 5,088,282 |
| Total capital assets not being depreciated | 3,235,032 | 5,210,322 | (453,445) | 7,991,909 |
| Capital assets being depreciated: | | | | |
| Buildings and improvements | 19,838,866 | 226,629 | - | 20,065,495 |
| Structures and improvements | 9,548,418 | 645,468 | - | 10,193,886 |
| Machinery and equipment | 8,815,656 | 1,366,619 | (321,964) | 9,860,311 |
| Vehicles | 12,662,698 | 1,170,937 | (1,031,231) | 12,802,404 |
| Furniture | 155,307 | 2,874 | - | 158,181 |
| Infrastructure | 58,647,495 | 1,843,802 | - | 60,491,297 |
| Total accumulated depreciation | (53,815,340) | (6,317,754) | 1,313,189 | (58,819,905) |
| Total capital assets being depreciated, net | 55,853,100 | (1,061,425) | (40,006) | 54,751,669 |
| Governmental activities capital assets, net | $ 59,088,132 | $ 4,148,897 | $ (493,451) | $ 62,743,578 |

The June 30, 2002 ending balance in accumulated depreciation was restated to accurately reflect the useful lives of the assets. The decreases in the construction in progress is equally reflected as an addition to the capital assets.

| | Beginning Balance | Increases | Decreases | Ending Balance |
|---|---|---|---|---|
| **Business-type activities:** | | | | |
| Capital assets, not being depreciated: | | | | |
| Land | $ 2,866,447 | $ - | $ - | $ 2,866,447 |
| Construction in progress | 1,789,854 | 815,633 | (1,760,567) | 844,920 |
| Total capital assets, not being depreciated | 4,656,301 | 815,633 | (1,760,567) | 3,711,367 |
| Capital assets being depreciated: | | | | |
| Buildings and improvements | 51,139,739 | 9,181,931 | - | 60,321,670 |
| Machinery, equipment and vehicles | 1,345,819 | 156,483 | (102,487) | 1,399,815 |
| Improvements other than buildings | 239,489 | - | - | 239,489 |
| Less: accumulated depreciation | (33,905,730) | (1,743,166) | 49,540 | (35,599,356) |
| Total capital assets being depreciated, net | 18,819,317 | 7,595,248 | (52,947) | 26,361,618 |
| Business-type activities capital assets, net | $ 23,475,618 | $ 8,410,881 | $ (1,813,514) | $ 30,072,985 |

Depreciation expense was charged to functions/programs of the primary government as follows:

| | |
|---|---|
| Governmental activities: | |
| General government | $ 3,237,402 |
| Public safety | 1,798,201 |
| Highways and streets, including depreciation of general infrastructure assets | 398,498 |
| Health and sanitation | 281,128 |
| Culture and recreation | 562,085 |
| Social services | 40,439 |
| Total depreciation expense-governmental activities | $ 6,317,753 |
| Business-type activities: | |
| Civic Center | $ 770,053 |
| Parking System | 973,114 |
| Total depreciation expense-business-type activities | $ 1,743,167 |

*Construction in Progress*

The government has active construction projects as of June 30, 2003. The projects include street repairs, lighting for streets, recreation facilities and a new fire station. At year end the amounts for governmental activities spent-to-date are as follows:

| | Spent-to-Date | Funded |
|---|---|---|
| Kennewha & Burlew Streets | $ 2,800 | General Fund & CDBG Grants |
| Louden Heights | 5,700 | General Fund |
| Bridge Road Retaining Wall | 1,120,103 | General Fund & State DOH Grant |
| Edgewood Slip Repairs | 140,222 | General Fund |
| Stone Road | 53,780 | General Fund |
| Scraggs Drive | 55,588 | CDBG Grants |
| Tennis Club Sidewalk Extension | 53,080 | General Fund |
| Kanawha City Multipurpose Room | 273,744 | General Fund & Private Contributions |
| Kanawha Blvd. Lighting Project | 1,198,590 | DOT Grants |
| Elkriver Project | 219,533 | DOT Grants |
| Municipal Auditorium Renovations | 51,571 | Municipal Aud. Capital Improvement Fund |
| Baseball Park | 746,718 | Bond Issuance, State Grants, Contributions |
| Orchard Manor Fire Station | 1,166,853 | Bond Issuance |
| | $ 5,088,282 | |

For business-type activities, the government has an active construction project to renovate the City's parking garages. At year end total spent-to-date was $844,921. This project is funded by the Parking System and the General Fund.

**Discretely Presented Component Unit**

Activity related to capital assets for the Sanitary Board for the fiscal year ended June 30, 2003 was as follows:

| | Beginning Balances | Increases | Decreases | Ending Balance |
|---|---|---|---|---|
| Capital Assets, not being depreciated: | | | | |
| Land | $ 755,247 | $ 740 | $ - | $ 755,987 |
| Construction in progress | 842,810 | 1,920,616 | (84,418) | 2,679,008 |
| Sewer system, July 1, 1952 | 1 | - | - | 1 |
| Total capital assets not being depreciated | $ 1,598,058 | $ 1,921,356 | $ (84,418) | $ 3,434,996 |
| Capital assets, being depreciated: | | | | |
| Structures and improvements | $ 8,238,437 | $ 32,151 | $ - | $ 8,270,588 |
| Collection system | 46,449,458 | 487,567 | - | 46,937,025 |
| Pumping system | 2,492,514 | 2,650 | - | 2,495,164 |
| Treatment and disposal system | 17,070,223 | 27,673 | - | 17,097,896 |
| General plant equipment | 3,905,865 | 91,000 | (64,407) | 3,932,458 |
| Less: accumulated depreciation | (30,871,617) | (2,078,735) | 62,955 | (32,887,397) |
| Total capital assets being depreciated | $ 47,284,880 | $ (1,437,694) | $ (1,452) | $ 45,845,734 |
| Total capital assets, net | $ 48,882,938 | $ 483,662 | $ (85,870) | $ 49,280,730 |

**D. Interfund Receivables, Payables, and Transfers**

The composition of interfund balances as of June 30, 2003, is as follows:

Due to/from other funds

| Receivable Fund | Payable Fund | Amount |
|---|---|---|
| General | Civic Center | $ 173,069 |
| | Parking System | 441,661 |
| | HOME | 7,243 |
| | Nonmajor Governmental Funds | 105,290 |
| Civic Center | General Fund | 141 |
| Parking System | General Fund | 393,643 |
| | Nonmajor Governmental Fund | 833 |
| Nonmajor Governmental Funds | Nonmajor Governmental Fund | 49,121 |
| Total | | $ 1,171,001 |

Due to/from primary government and component units:

| Receivable Fund | Payable Fund | Amount |
|---|---|---|
| General Fund | Component Unit-Sanitary Board | $ 500 |

Interfund Transfers:

| | Transfers In | | | | | |
|---|---|---|---|---|---|---|
| | General Fund | Nonmajor Governmental | Civic Center Enterprise | Parking System Enterprise | Agency Fund | Total Transfers In |
| Transfers out: | | | | | | |
| General fund | $ 3,154,722 | $ - | $ 1,023,948 | $ 786,000 | $ - | $ 4,964,670 |
| Coal Severance | - | - | 88,118 | - | - | 88,118 |
| Nonmajor governmental funds | - | 3,558,025 | 9,008 | - | 31,365 | 3,598,398 |
| Civic Center Enterprise | - | 96,501 | - | - | - | 96,501 |
| Total Transfers Out | $ 3,154,722 | $ 3,654,526 | $ 1,121,074 | $ 786,000 | $ 31,365 | $ 8,747,687 |

## E. Leases

*Capital Leases*

The government has entered into lease agreements as lessee for financing the acquisition of recreation, public works and public safety equipment. These lease agreements qualify as capital leases for accounting purposes, and, therefore have been recorded at the present value of the future minimum lease payments as of the inception date.

The government has entered into lease agreements as lessee for financing the acquisition of machinery and equipment for its Civic Center and Parking System Funds. These lease agreements qualify as capital assets for accounting purposes, and, therefore have been recorded at the present value of future minimum lease payments as of the inception date in the Civic Center and Parking System enterprise funds.

The assets acquired through capital leases are as follows:

| Asset | Governmental Activities | Civic Center | Parking System |
|---|---|---|---|
| Machinery, equipment and vehicles | $ 3,469,017 | $ 28,677 | $ 228,252 |
| Less: accumulated depreciation | (905,507) | (12,356) | (162,715) |
| Total | $ 2,563,510 | $ 16,321 | $ 65,537 |

Assets acquired through capital leases for governmental activities were estimated since the history of these lease assets could not be converted upon implementation of new accounting software on July 1, 2002. The accumulated depreciation for these assets was also estimated. All new lease purchases during the fiscal year ended June 30, 2003 are stated at actual costs and actual depreciation.

The future minimum lease obligations and the net present value of these minimum lease payments as of June 30, 2003, were as follows:

| Year Ending June 30 | Governmental Activities | Civic Center | Parking System |
|---|---|---|---|
| 2004 | $ 1,597,855 | $ 6,743 | $ 31,663 |
| 2005 | 1,238,520 | 6,743 | 26,737 |
| 2006 | 590,523 | 3,048 | 12,995 |
| 2007 | 233,501 | - | - |
| 2008 | 67,047 | - | - |
| Total minimum lease payments | $ 3,727,446 | $ 16,534 | $ 71,395 |
| Less: amount representing interest | (243,475) | (1,287) | (2,888) |
| Present value of minimum lease payments | $ 3,483,971 | $ 15,247 | $ 68,507 |

The Sanitary Board, a discretely presented component unit entered into a Lease-Purchase Agreement dated December 27, 2000 with Banc One Leasing Corporation of Columbus, Ohio. The economic substance of the lease is that The Sanitary Board is financing the acquisition of equipment/vehicles for its maintenance crews through the lease and, accordingly, it is recorded in the Board's assets and liabilities.

The assets acquired through capital lease are as follows:

| | |
|---|---|
| General plant equipment | $ 1,269,549 |
| Less: accumulated depreciation | (534,134) |
| Total | $ 735,415 |

The lease agreement is secured by the leased assets. The lease agreement contains a purchase option under which the Board may purchase all of the equipment covered by the lease on any rent payment due date (bi-annual; June 27 and December 27) by paying Banc One Leasing Corporation all rent payments then due plus the termination value at such date.

The future minimum lease obligation and the net present value of these minimum lease payments as of June 30, 2003, were as follows:

| Year Ending June 30 | |
|---|---|
| 2004 | $ 240,296 |
| Total minimum lease payments | $ 240,296 |
| Less: amount representing interest | (6,306) |
| Present value of minimum lease payments | $ 233,990 |

## F. Long-Term Debt

*General Obligation Bonds*

The government issues general obligation bonds to provide for the acquisition and construction of major capital facilities. General Obligation Bonds currently outstanding are as follows:

**Governmental Activities**

| Purpose | Maturity Date | Interest Rates | Issued | Retired | Balance June 30, 2003 |
|---|---|---|---|---|---|
| Public Improvement Bonds | | | | | |
| Series 1989 | 2009 | 7.1 to 7.2% | $ 15,000,000 | $ 7,205,000 | $ 7,795,000 |
| Total | | | $ 15,000,000 | $ 7,205,000 | $ 7,795,000 |

Annual debt service requirements to maturity for general obligation bonds are as follows:

| Year Ending June 30 | Governmental Activities Principal | Interest |
|---|---|---|
| 2004 | $ 885,000 | $ 529,380 |
| 2005 | 955,000 | 463,140 |
| 2006 | 1,025,000 | 391,860 |
| 2007 | 1,100,000 | 315,360 |
| 2008 | 1,185,000 | 233,100 |
| 2009-2010 | 2,645,000 | 193,860 |
| Total | $ 7,795,000 | $ 2,126,700 |

*Revenue Bonds*

The municipality issues bonds where the government pledges income derived from acquired or constructed assets to pay debt service. On December 6, 2002, the Commission issued $1,300,000 of Charleston Building Commission (West Virginia), Facilities Revenue Bonds, Series 2002 B (City of Charleston Fire Station) bearing interest at 3.81%. The proceeds of these bonds are being used to construct and equip a new fire station on certain real property within or adjoining the Orchard Manor housing complex. The bonds are secured by the fire station and an irrevocable pledge of lease payments, which are required to be in sufficient amount to pay principal and interest on the bonds when due. Upon expiration of the lease term, title to the fire station will pass to the City. Accordingly, the fire station is recorded as an asset of the City, and the related obligation for repayment for the bonds is recorded as a liability. Revenue Bonds outstanding, net of unamortized issuance costs of $888,318, at year end are as follows:

| Purpose | Maturity Dates | Interest Rates | Issued | Retired | Balance June 30, 2003 |
|---|---|---|---|---|---|
| Governmental activities: | | | | | |
| Center for Arts and Sciences | | | | | |
| Series 1999 | 2024 | 5.30-5.95% | $ 2,895,000 | $ 240,000 | $ 2,655,000 |
| Public Safety Center | | | | | |
| Series 1999 | 2024 | 5.00-5.70% | 1,500,000 | 120,000 | 1,380,000 |
| Fire Station | | | | | |
| Series 2002B | 2013 | 3.81% | 1,193,274 | - | 1,193,274 |
| | | | $ 5,588,274 | $ 360,000 | $ 5,228,274 |

| Purpose | Maturity Dates | Interest Rates | Issued | Retired | Balance June 30, 2003 |
|---|---|---|---|---|---|
| Business-type activities: | | | | | |
| Parking System Refunding Series 1993 | 2013 | Variable | $ 5,235,000 | $ 2,534,910 | $ 2,784,476 |
| Parking System Revenue Series 1994A | 2016 | Variable | 4,545,000 | 700,000 | 3,845,000 |
| Parking System Subordinate Revenue Series 1994E | 2016 | Variable | 5,455,000 | 1,205,000 | 4,250,000 |
| Parking System Subordinate Revenue Series 1995A | 2016 | Variable | 1,620,000 | 360,000 | 1,260,000 |
| Civic Center Improvement Bond Series 1998 | 2023 | 4.6 to 5.1% | 3,635,000 | 450,789 | 3,189,611 |
| Civic Center Improvement Bond Series 1999 | 2024 | 4.51 to 6.71% | 4,060,000 | 399,365 | 3,669,274 |
| Civic Center Lease Revenue Bonds Series 1999 | 2024 | 5.2 to 6.7% | 1,610,000 | 199,921 | 1,414,743 |
| Total business-type activities | | | $ 26,160,000 | $ 5,849,985 | $ 20,413,104 |
| Total revenue bonds | | | $ 31,748,274 | $ 6,209,985 | $ 25,641,378 |
| Component Unit: | | | | | |
| Sanitary Board Service Revenue Bonds | 2014-2030 | Variable | $ 20,938,760 | n/a | $ 20,938,760 |
| Total component unit | | | $ 20,938,760 | n/a | $ 20,938,760 |

Revenue bond debt service requirements to maturity are as follows:

| Year Ended | Governmental Activities | | Business-Type Activities | |
|---|---|---|---|---|
| | Principal | Interest | Principal | Interest |
| 2004 | $ 219,052 | $ 275,489 | $ 875,000 | $ 1,334,509 |
| 2005 | 228,247 | 265,585 | 925,000 | 1,285,646 |
| 2006 | 237,603 | 255,254 | 980,000 | 1,231,504 |
| 2007 | 247,126 | 244,489 | 740,000 | 1,026,283 |
| 2008 | 256,823 | 233,303 | 785,000 | 980,600 |
| 2009-2013 | 1,481,149 | 975,733 | 7,175,000 | 4,714,043 |
| 2014-2018 | 1,015,000 | 664,483 | 5,960,000 | 2,077,525 |
| 2019-2023 | 1,335,000 | 335,903 | 2,745,000 | 808,320 |
| 2024-2026 | 315,000 | 18,480 | 1,090,000 | 69,948 |
| Totals | $ 5,335,000 | $ 3,268,719 | $ 21,275,000 | $ 13,528,378 |

The Sanitary Board's (component unit) revenue bond debt service requirements to maturity are as follows:

| Year Ended | Principal | Interest |
|---|---|---|
| 2004 | $ 1,058,564 | $ 775,709 |
| 2005 | 1,103,568 | 732,161 |
| 2006 | 1,129,131 | 706,801 |
| 2007 | 1,155,273 | 678,782 |
| 2008 | 1,192,036 | 646,719 |
| 2009-2013 | 6,265,979 | 2,684,427 |
| 2014-2018 | 5,575,609 | 1,698,349 |
| 2019-2023 | 1,532,901 | 1,006,257 |
| 2024-2028 | 1,347,447 | 553,262 |
| 2029-2030 | 578,252 | 70,019 |
| Totals | $ 20,938,760 | $ 9,552,486 |

## Changes in General Long-Term Liabilities

| | Governmental Activities | | | | |
|---|---|---|---|---|---|
| | Beginning Balance | Additions | Reductions | Ending Balance | Due Within One Year |
| General obligation bonds payable | $ 9,435,766 | $ - | $ (1,640,766) | 7,795,000 | $ 885,000 |
| Revenue bonds payable | 4,135,000 | 1,219,695 | (100,000) | 5,254,695 | 219,052 |
| Less: deferred amounts: | | | | | |
| Issuance costs | - | (26,421) | - | (26,421) | - |
| Total bonds payable | 13,570,766 | 1,193,274 | (1,740,766) | 13,023,274 | 1,104,052 |
| Capital leases | 3,785,186 | 1,285,425 | (1,586,639) | 3,483,972 | 1,460,622 |
| Net pension obligation | 16,803,797 | 7,518,949 | (3,263,326) | 21,059,420 | 7,156,801 |
| Claims and judgments | 2,075,000 | 3,401,529 | (2,075,000) | 3,401,529 | 3,062,175 |
| Compensated absences | 1,358,400 | 1,437,259 | (1,358,400) | 1,437,259 | 1,437,259 |
| Governmental activities Long-term liabilities | $ 37,593,149 | $ 14,836,436 | $ (10,024,131) | $ 42,405,454 | $ 14,220,909 |

| | Business-Type Activities | | | | |
|---|---|---|---|---|---|
| | Beginning Balance | Additions | Reductions | Ending Balance | Due Within One Year |
| Revenue bonds payable | $ 22,100,000 | $ - | $ (825,000) | $ 21,275,000 | $ 875,000 |
| Less: deferred amounts: | | | | | |
| Issuance discounts | (964,984) | - | 103,087 | (861,897) | - |
| Capital leases | 67,765 | 88,807 | (72,818) | 83,754 | 28,983 |
| Compensated absences | 62,247 | 68,522 | (62,247) | 68,522 | 68,522 |
| Business-type activities Long-term liabilities | $ 21,265,028 | $ 157,329 | $ (856,978) | $ 20,565,379 | $ 972,505 |

## G. Contributed Capital

There were no changes in the proprietary and similar component unit contributed capital accounts during the year.

## H. Restricted Assets

The balances of the restricted asset accounts in the enterprise funds are as follow:

| | | |
|---|---|---|
| Customer deposits | $ | 91,014 |
| Revenue bond operations and maintenance account | | 1,206,639 |
| Revenue bond construction account | | 31,638 |
| Revenue bond debt service account | | 2,358,890 |
| Revenue bond renewal and replacement account | | 21,852 |
| Total restricted assets | $ | 3,710,033 |

## I. Benefits Funded by the State of West Virginia

For the year ended June 30, 2003, the State of West Virginia contributed estimated payments on behalf of City employees as follows:

| Plan | | Amount |
|---|---|---|
| Policemen's Pension and Relief Fund | $ | 989,441 |
| Firemen's Pension and Relief Fund | $ | 1,162,738 |

State contributions are funded by allocations of the State's insurance premium tax.

## J. Prior Period Adjustment

The following governmental fund balances required restatement at the beginning of the year as follows:

| | | General Fund | | Solid Waste | | Springhill Park Cemetery |
|---|---|---|---|---|---|---|
| Fund balances, as previously stated | $ | 10,603,725 | $ | 959,802 | $ | 1,154,174 |
| Add: | | | | | | |
| Prior year receivables | | 487,004 | | 194,173 | | - |
| Checking account balance | | - | | - | | 2,098 |
| Fund balances, restated | $ | 11,090,729 | $ | 1,153,975 | $ | 1,156,272 |

The following fiduciary net assets required restatement at the beginning of the year as follows:

| | | Policemen's Pension and Relief | | Firemen's Pension and Relief |
|---|---|---|---|---|
| Net assets, as previously stated | $ | 13,696,615 | $ | 6,281,501 |
| Add: | | | | |
| Employee contributions error | | 17,537 | | (17,537) |
| Expense prior year error | | 5,880 | | - |
| Net assets, restated | $ | 13,720,032 | $ | 6,263,964 |

### K. Environmental Remediation Costs

In 1997, The Sanitary Board, a discretely presented component unit, was ordered by the West Virginia Division of Environmental Protection to submit a plan for environmental remediation relating to sludge removal at Copenhaver Park. At June 30, 2003, the Sanitary Board has accrued its best estimate of its obligation regarding the site, which is presented in the Statement of Net Assets under Noncurrent Liabilities: Due in more than one year. The Sanitary Board could incur additional obligations. It is reasonably possible that the recorded estimates of the obligation may change in the near term.

## V. Other Information

### A. Risk Management

The government is exposed to various risks of loss related to torts, theft of, damage to and destruction of assets; errors and omissions; and natural disasters for which the government carries insurance with Commercial Insurance Services for umbrella (general liability) insurance for these various risks.

Liabilities are reported when it is probable a loss has occurred and the amount of the loss can be reasonably estimated.

Claims liabilities are calculated considering the effects of inflation, recent claim settlement trends including frequency and amount of pay-outs and other economic and social factors. The liability for claims and judgments include an amount for claims that have been incurred but not reported. Changes in the balances of claims liabilities during the fiscal year are as follows:

| | Year Ended June 30, 2003 |
|---|---|
| Unpaid claims, beginning of fiscal year | $ 2,075,000 |
| Incurred claims | 3,401,529 |
| Claim payments | (2,075,000) |
| Unpaid claims, end of fiscal year | $ 3,401,529 |

The government is the owner and permit holder for the City of Charleston's landfill. In accordance with the provisions of an Operating Agreement between the government and contractor dated February 15, 1994, the government maintains a contingency fund for the closure/post closure costs for the landfill in the event of default by contractor.

### B. Contingent Liabilities

Amounts received or receivable from grant agencies are subject to audit and adjustment by grantor agencies, principally the federal government. Any disallowed claims, including amounts already collected, may constitute a liability of the applicable funds. The amount, if any, of expenditures that may be disallowed by the grantor cannot be determined at this time, although the government expects such amounts, if any, to be immaterial.

The government is a defendant in various lawsuits. Although the outcome of these lawsuits is not presently determinable, in the opinion of the government's counsel the resolution of these matters will not have a material adverse effect on the financial condition of the government.

### C. Other Post Employment Benefits

The government does not provide post retirement health benefits except those mandated by the Consolidated Omnibus Budget Reconciliation at (COBRA). The requirements established by COBRA are fully funded by employees who elect coverage under the Act, and no direct costs are incurred by the City, however, employees who elect COBRA are covered under the City's self-insured health plan as all active employees and those retired employees who maintain City health plan coverage.

## VI. Employee Retirement Systems and Plans

*VI:A.1. Plan Descriptions, Contribution Information, and Finding Policies*

The Municipality of Charleston, West Virginia participates in two single employer, public employee retirement systems. Assets are held separately and may be used only for the payment of benefits to the members of the respective plans, as follows:

The Policemen's Pension and Relief Fund (PPRF) provides retirement benefits for substantially all full-time police employees. Unless otherwise indicated, PPRF information in this Note is provided as of the latest actuarial valuation, July 1, 2001.

The Firemen's Pension and Relief Fund (FPRF) provides retirement benefits for substantially all full-time fire employees. Unless otherwise indicated, FPRF information in this Note is provided as of the latest actuarial valuation, July 1, 2002.

Actuarial valuations are required to be performed once every three years per state statute. However, the actuarial valuations can be performed in shorter intervals at the discretion of the PPRF and FPRF's board. For additional information relating to basis of accounting and reported investment values, see Notes I.C., I.D.1. and IV.I.

Memberships of the plans are as follows:

| Group | PPRF | FPRF | Totals |
|---|---|---|---|
| Active Employees | 169 | 196 | 365 |
| Vested Terminated Benefits | 4 | 0 | 4 |
| Retirees and Beneficiaries Currently Receiving Benefits | 86 | 123 | 209 |
| Total | 259 | 319 | 578 |

These plans are defined benefit plans. The following is a summary of funding policies, contribution methods and benefit provisions.

| | PPRF | FPRF |
|---|---|---|
| Determination of contribution requirements | Actuarially determined | Actuarially determined |
| Employer | Contributes annually an amount which, together with contributions from the members and the allocable portion of the state premium tax fund, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years. However, municipalities may utilize an alternative contribution method which allows the municipality to contribute no less than 107% of the prior year contribution provided the actuary certifies in writing that the fund will be solvent over the next 15 years under this method. In no event can the employer contribution be less than the normal cost as determined by the actuary. | |
| Plan Members | 7% of covered payroll | 7% of covered payroll |
| Period Required to Vest | No vesting occurs. If separation from employment occurs the member is entitled to a refund of his/her contributions only | |
| Post-Retirement Benefit Increases | Cost of living adjustment after two years of retirement. Adjustment calculated on the first $15,000 of the total annual benefit in the first year and then the cumulative index for the preceding year. The supplemental pension benefit shall not exceed four percent. | |
| Eligibility for Distribution | 20 years of credited service or age 65; whichever first. Must be at least age 50. | |
| Provisions for: | | |
| Disability Benefits | Yes | Yes |
| Death Benefits | Yes | Yes |

*Annual Required Contributions and Significant Actuarial Assumptions*

The actuarial assumptions and other information used to determine the annual required contributions (ARC) are as follows:

| | Policemen's Pension & Relief Fund | Firemen's Pension & Relief Fund |
|---|---|---|
| Valuation Date | 7/1/2001 | 7/1/2002 |
| Actuarial Cost Method | Projected Unit Credit | Projected Unit Credit |
| Amortization Method | Level Percentage Open | Level Percentage Open |
| Amortization Period | 40 Years (Level Percentage) | 40 Years (Level Percentage) |
| Actuarial Asset Valuation Method | Market Value | Market Value |
| Actuarial Assumptions: | | |
| Investment Rate of Return | 6.375% | 7.00% |
| Projected Salary Increases | 25.5% per year (0-2) 4.25 thereafter | 25.5% per year (0-1) 4.25 thereafter |
| Post Retirement Benefit Increases | None | None |
| Inflation | 3.00% | 3.00% |
| Cost of Living Adjustments | $15,000 of annual pension is increased by the lesser of inflation and 4%, but 75% of purchasing power is maintained. | $15,000 of annual pension is is increased by the lesser of inflation and 4%, but 75% of purchasing power is maintained. |

*VI.A.2. Annual Pension Cost, Net Pension Obligation and Reserves*

Current year annual pension costs for the PPRF and FPRF are shown in the trend information provided in VI.A.4. The annual required contributions were not made by both the PPRF or FPRF. The net pension obligation is listed in VI.A.3.

*Reserves*

There are no assets legally reserved for purposes other than the payment of plan members benefits for either plan.

*VI:A.3 Annual Pension Cost and Net Pension Obligation (NPO)*

The municipality's annual pension cost and net pension obligation for the Policemen's and Firemen's Pension and Relief funds are as follows:

| | PPRF | FPRF |
|---|---|---|
| Annual required contribution | $ 3,282,630 | $ 3,874,171 |
| Interest on short term | 646,347 | 466,551 |
| Adjustment to annual required contribution | (438,718) | (312,033) |
| Annual pension cost | 3,490,259 | 4,028,689 |
| Contributions made | 1,265,982 | 1,997,344 |
| Increase in net pension obligation | 2,224,277 | 2,031,345 |
| Net pension obligation at beginning of the year | 10,138,780 | 6,665,017 |
| Net pension obligation at the end of the year | $ 12,363,057 | $ 8,696,362 |

*VI.A.4. Trend Information*

Policemen's Pension and Relief Fund (PPRF)

| Fiscal Year | Annual Pension Cost | Percentage Contributed | Net Pension Obligation |
|---|---|---|---|
| 2003 | $ 3,490,259 | 36% | $ 12,363,057 |
| 2002 | $ 3,443,960 | 34% | $ 10,138,780 |
| 2001 | $ 3,003,290 | 37% | $ 7,887,981 |
| 2000 | $ 2,948,550 | 35% | $ 5,980,449 |

Firemen's Pension and Relief Fund (FPRF)

| Fiscal Year | Annual Pension Cost | Percentage Contributed | Net Pension Obligation |
|---|---|---|---|
| 2003 | $ 4,028,690 | 50% | $ 8,696,363 |
| 2002 | $ 3,438,807 | 54% | $ 6,665,017 |
| 2001 | $ 3,404,524 | 51% | $ 5,092,887 |
| 2000 | $ 3,321,120 | 49% | $ 3,432,921 |

*VI.B.1 Plan Descriptions Contribution Information and Funding Policies*

Public Employee Retirement System (PERS)

The Municipality of Charleston, West Virginia participates in a state-wide, cost-sharing, multiple-employer defined benefit plan on behalf of general municipal employees. The system is administered by agencies of the State of West Virginia and funded by contributions from participants, employers, and state appropriations, as necessary.

The following is a summary of eligibility factors, contribution methods, and benefit provisions:

| | Public Employees Retirement System |
|---|---|
| Eligibility to participate | All city full-time employees, except those covered by PPRF and FPRF |
| Authority establishing contribution obligations and benefit provisions | State Statute |
| Plan member's contribution rate | 4.50% |
| Municipality's contribution rate | 9.50% |
| Period required to vest | Five Years |
| Benefits and eligibility for distribution | A member who has attained age 60 and has earned 5 years or more of contributing service or age 55 if the sum of his/her age plus years of credited service is equal to or greater than 80. The final average salary (three highest consecutive years in the last 10) times the years of service times 2% equals the annual retirement benefit. |
| Deferred retirement portion | No |
| Provisions for: | |
| Cost of Living | No |
| Death | Yes |

*VI.B.2. Trend Information*

Public Employees' Retirement System (PERS)

| Fiscal Year | Annual Pension Cost | Percentage Contributed |
|---|---|---|
| 2003 | $ 1,089,353 | 100% |
| 2002 | $ 1,514,240 | 99% |
| 2001 | $ 1,540,706 | 100% |
| 2000 | $ 1,566,043 | 100% |

PERS issues a publicly available financial report that includes financial statements and required supplementary information. That information may be obtained by writing to the Public Employees' Retirement System, Building 5, Room 1000, 1900 Kanawha Boulevard East, Charleston, WV 25305.

## I. DEFINED BENEFIT PENSION TRUSTS-SCHEDULES OF FUNDING PROGRESS

### Policemen's Pension and Relief Fund (PPRF)

| Actuarial Valuation Date | Actuarial Value of Assets (a) | Actuarial Accrued Liability (AAL) Entry Age (b) | Unfunded AAL (UAAL) (b)-(a) | Funded Ratio (a)/(b) | Covered Payroll c | UAAL as a % Covered Payroll (b-a)/c |
|---|---|---|---|---|---|---|
| 7/1/1997 | $11,329,860 | $65,658,421 | $54,328,561 | 17% | $6,430,212 | 845% |
| 7/1/1999 | $13,183,185 | $68,856,200 | $55,673,015 | 19% | $6,545,780 | 851% |
| 7/1/2001 | $14,436,077 | $76,015,300 | $61,579,223 | 19% | $6,606,800 | 932% |

### Firemen's Pension and Relief Fund (FPRF)

| Actuarial Valuation Date | Actuarial Value of Assets (a) | Actuarial Accrued Liability (AAL) Entry Age (b) | Unfunded AAL (UAAL) (b)-(a) | Funded Ratio (a)/(b) | Covered Payroll c | UAAL as a % Covered Payroll (b-a)/c |
|---|---|---|---|---|---|---|
| 7/1/1998 | $6,613,424 | $71,358,728 | $64,745,304 | 9% | $7,063,357 | 917% |
| 7/1/2000 | $6,492,763 | $68,627,600 | $62,134,837 | 9% | $7,140,380 | 870% |
| 7/1/2002 | $6,281,501 | $79,213,700 | $72,932,199 | 8% | $7,674,090 | 950% |

# *COMBINING AND INDIVIDUAL FUND FINANCIAL STATEMENTS*

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING BALANCE SHEET - NONMAJOR GOVERNMENTAL FUNDS
June 30, 2003

| ASSETS | Special Revenue | Capital Projects | Debt Service Sinking Fund | Permanent Springhill Cemetery | Total Nonmajor Governmental Funds |
|---|---|---|---|---|---|
| **Current:** | | | | | |
| Cash and cash equivalents | $ 1,003,906 | $ 2,264,343 | $ 2,311,166 | $ 221,860 | $ 5,801,275 |
| Investments | -- | -- | -- | 973,658 | 973,658 |
| Receivables - net: | -- | -- | -- | -- | -- |
| Taxes | -- | -- | 91,897 | -- | 91,897 |
| Accounts | 432,751 | -- | -- | -- | 432,751 |
| Grants | 98,725 | -- | -- | -- | 98,725 |
| Loans | 1,799,783 | -- | -- | -- | 1,799,783 |
| Accrued interest | 566 | -- | -- | 11,849 | 12,415 |
| Due from: | | | | | |
| Other funds | 49,121 | -- | -- | -- | 49,121 |
| Restricted cash | 1,028,153 | -- | 133,898 | -- | 1,162,051 |
| Total assets | 4,413,005 | 2,264,343 | 2,536,961 | 1,207,367 | 10,421,676 |
| **LIABILITIES AND FUND BALANCES** | | | | | |
| **Liabilities:** | | | | | |
| Accounts payable | 311,755 | 70,185 | -- | -- | 381,940 |
| Due to: | | | | | |
| Other funds | 155,246 | -- | -- | -- | 155,246 |
| Deferred revenue | 1,293,549 | -- | -- | -- | 1,293,549 |
| Total liabilities | 1,760,550 | 70,185 | -- | -- | 1,830,735 |
| **Fund balances:** | | | | | |
| Unreserved | 450,603 | -- | -- | -- | 450,603 |
| Reserved for: | | | | | |
| Perpetual care | -- | -- | -- | 1,207,367 | 1,207,367 |
| Debt service | -- | -- | 2,536,961 | -- | 2,536,961 |
| Community development | 2,063,769 | -- | -- | -- | 2,063,769 |
| Capital projects | -- | 2,194,158 | -- | -- | 2,194,158 |
| Public safety | 138,083 | -- | -- | -- | 138,083 |
| Total fund balances | 2,652,455 | 2,194,158 | 2,536,961 | 1,207,367 | 8,590,941 |
| Total liabilities and fund balances | $ 4,413,005 | $ 2,264,343 | $ 2,536,961 | $ 1,207,367 | $ 10,421,676 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES -
NONMAJOR GOVERNMENTAL FUNDS
For the Fiscal Year Ended June 30, 2003

| | Special Revenue | Capital Projects | Debt Service Sinking Fund | Permanent Springhill Cemetery | Total Nonmajor Governmental Funds |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| Taxes: | | | | | |
| Ad valorem property taxes | $ -- | $ -- | $ 2,494,176 | $ -- | $ 2,494,176 |
| Intergovernmental: | | | | | |
| Federal | 5,347,036 | -- | -- | -- | 5,347,036 |
| State | 25,593 | -- | -- | -- | 25,593 |
| Local | 20,602 | -- | -- | -- | 20,602 |
| Charges for services | 3,870,893 | -- | -- | -- | 3,870,893 |
| Fines and forfeits | 734,757 | -- | -- | -- | 734,757 |
| Interest and investment earnings | 101,166 | 55,857 | 39,467 | 46,863 | 243,353 |
| Reimbursements | -- | 54,773 | -- | -- | 54,773 |
| Contributions and donations | 40,080 | -- | -- | 15,766 | 55,846 |
| Miscellaneous | 72 | 90,000 | -- | 25,206 | 115,278 |
| Total revenues | 10,140,199 | 200,630 | 2,533,643 | 87,835 | 12,962,307 |
| **EXPENDITURES:** | | | | | |
| Current: | | | | | |
| General government | 17,064 | -- | -- | -- | 17,064 |
| Public safety | 1,007,034 | -- | -- | -- | 1,007,034 |
| Streets and transportation | 9,578 | -- | -- | -- | 9,578 |
| Health and sanitation | 1,047,241 | -- | -- | -- | 1,047,241 |
| Administrative and general | 13,806 | -- | -- | -- | 13,806 |
| Culture and recreation | -- | -- | -- | 36,740 | 36,740 |
| Social services | 231,508 | -- | -- | -- | 231,508 |
| Capital projects | -- | 4,871,264 | -- | -- | 4,871,264 |
| Economic development | 4,455,237 | -- | -- | -- | 4,455,237 |
| Debt service: | | | | | |
| Principal | -- | -- | 1,740,766 | -- | 1,740,766 |
| Interest | -- | -- | 879,354 | -- | 879,354 |
| Total expenditures | 6,781,468 | 4,871,264 | 2,620,120 | 36,740 | 14,309,592 |
| Excess (deficiency) of revenues over (under) expenditures | 3,358,731 | ( 4,670,634) | ( 86,477) | 51,095 | ( 1,347,285) |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES -
NONMAJOR GOVERNMENTAL FUNDS
For the Fiscal Year Ended June 30, 2003

| | Special Revenue | Capital Projects | Debt Service Sinking Fund | Permanent Springhill Cemetery | Total Nonmajor Governmental Funds |
|---|---|---|---|---|---|
| **OTHER FINANCING SOURCES (USES)** | | | | | |
| Transfers in | $ 65,679 | $ 3,247,579 | $ 341,267 | $ -- | $ 3,654,525 |
| Transfers (out) | ( 3,170,401) | ( 930,902) | -- | -- | ( 4,101,303) |
| Contributions | -- | ( 26,014) | -- | -- | ( 26,014) |
| Total other financing sources (uses) | ( 3,104,722) | 2,290,663 | 341,267 | -- | ( 472,792) |
| Net change in fund balances | 254,009 | ( 2,379,971) | 254,790 | 51,095 | ( 1,820,077) |
| Fund balances - beginning | 2,398,446 | 4,574,129 | 2,282,171 | 1,156,272 | 10,411,018 |
| Fund balances - ending | $ 2,652,455 | $ 2,194,158 | $ 2,536,961 | $ 1,207,367 | $ 8,590,941 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING BALANCE SHEET - NONMAJOR GOVERNMENTAL - SPECIAL REVENUE FUNDS
June 30, 2003

| | Municipal Stabilization | Community Development | Supportive Housing | FEMA Flood Recovery | Municipal Beautification |
|---|---|---|---|---|---|
| **ASSETS** | | | | | |
| **Current:** | | | | | |
| Cash and cash equivalents | $ 75,955 | $ 7,631 | $ -- | $ 20,479 | $ 15,661 |
| Receivables - net: | | | | | |
| Accounts | -- | -- | -- | -- | -- |
| Grants | -- | -- | -- | -- | -- |
| Loans | -- | 1,429,025 | 23,052 | -- | -- |
| Accrued interest | -- | 114 | -- | -- | -- |
| Due from: | | | | | |
| Other funds | -- | -- | -- | -- | -- |
| Restricted cash | -- | -- | -- | -- | -- |
| Total assets | 75,955 | 1,436,770 | 23,052 | 20,479 | 15,661 |
| **LIABILITIES AND FUND BALANCES** | | | | | |
| **Liabilities:** | | | | | |
| Accounts payable | -- | 42,276 | 23,052 | -- | 234 |
| Due to: | | | | | |
| Other funds | -- | 29,299 | -- | -- | -- |
| Deferred revenue | -- | 1,061,617 | -- | 20,479 | -- |
| Total liabilities | -- | 1,133,192 | 23,052 | 20,479 | 234 |
| **Fund balances:** | | | | | |
| Unreserved | 75,955 | -- | -- | -- | 15,427 |
| Reserved for: | | | | | |
| Community development | -- | 303,578 | -- | -- | -- |
| Public safety | -- | -- | -- | -- | -- |
| Total fund balances | 75,955 | 303,578 | -- | -- | 15,427 |
| Total liabilities and fund balances | $ 75,955 | $ 1,436,770 | $ 23,052 | $ 20,479 | $ 15,661 |

| Special Demolition | Sister Cities | Solid Waste | Police & Fire Donations | Asset Forfeiture | Municipal Court | Human Rights |
|---|---|---|---|---|---|---|
| $ 94,256 | $ 1,179 | $ 30,291 | $ 52,767 | $ 23,492 | $ 555 | $ 138,432 |
| -- | -- | 305,171 | -- | -- | 23,077 | 50 |
| -- | -- | -- | -- | -- | -- | -- |
| -- | -- | -- | -- | -- | -- | -- |
| -- | -- | -- | -- | -- | -- | -- |
| -- | -- | -- | -- | -- | -- | -- |
| -- | -- | 1,028,153 | -- | -- | -- | -- |
| 94,256 | 1,179 | 1,363,615 | 52,767 | 23,492 | 23,632 | 138,482 |
| -- | -- | 64,556 | 606 | 500 | -- | 519 |
| -- | -- | -- | -- | -- | 23,077 | -- |
| -- | -- | -- | -- | -- | -- | 121,744 |
| -- | -- | 64,556 | 606 | 500 | 23,077 | 122,263 |
| 94,256 | 1,179 | 270,906 | -- | -- | -- | 16,219 |
| -- | -- | 1,028,153 | -- | -- | -- | -- |
| -- | -- | -- | 52,161 | 22,992 | 555 | -- |
| 94,256 | 1,179 | 1,299,059 | 52,161 | 22,992 | 555 | 16,219 |
| $ 94,256 | $ 1,179 | $ 1,363,615 | $ 52,767 | $ 23,492 | $ 23,632 | $ 138,482 |

| Rental Rehabilitation | Department of Transportation Grant | Local Law Enforcement Block Grant | Metro Loan | Police Grants | Total Nonmajor Special Revenue Funds |
|---|---|---|---|---|---|
| $ 347,362 | $ 26,292 | $ 94,902 | $ 40,231 | $ 34,421 | $ 1,003,906 |
| -- | -- | -- | -- | 104,453 | 432,751 |
| -- | 98,725 | -- | -- | -- | 98,725 |
| 210,837 | -- | -- | 136,869 | -- | 1,799,783 |
| 73 | -- | -- | 379 | -- | 566 |
| -- | -- | -- | -- | 49,121 | 49,121 |
| -- | -- | -- | -- | -- | 1,028,153 |
| 558,272 | 125,017 | 94,902 | 177,479 | 187,995 | 4,413,005 |
| -- | 99,235 | 25,785 | -- | 54,992 | 311,755 |
| 3,713 | 49,121 | -- | -- | 50,036 | 155,246 |
| -- | -- | 56,540 | -- | 33,169 | 1,293,549 |
| 3,713 | 148,356 | 82,325 | -- | 138,197 | 1,760,550 |
| -- | ( 23,339) | -- | -- | -- | 450,603 |
| 554,559 | -- | -- | 177,479 | -- | 2,063,769 |
| -- | -- | 12,577 | -- | 49,798 | 138,083 |
| 554,559 | ( 23,339) | 12,577 | 177,479 | 49,798 | 2,652,455 |
| $ 558,272 | $ 125,017 | $ 94,902 | $ 177,479 | $ 187,995 | $ 4,413,005 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES -
NONMAJOR GOVERNMENTAL - SPECIAL REVENUE FUNDS
For the Fiscal Year Ended June 30, 2003

| | Municipal Stabilization | Community Development | Supportive Housing | FEMA Flood Recovery |
|---|---|---|---|---|
| **REVENUES** | | | | |
| Intergovernmental: | | | | |
| Federal | $ -- | $ 2,707,650 | $ 258,198 | $ 116,988 |
| State | -- | -- | -- | -- |
| Local | -- | -- | -- | -- |
| Charges for services | -- | -- | -- | -- |
| Fines and forfeits | -- | -- | -- | -- |
| Interest and investment earnings | 670 | 69,920 | -- | -- |
| Contributions and donations | -- | -- | -- | -- |
| Miscellaneous | -- | -- | -- | -- |
| Total revenues | 670 | 2,777,570 | 258,198 | 116,988 |
| **EXPENDITURES:** | | | | |
| Current: | | | | |
| General government | -- | -- | -- | -- |
| Public safety | -- | -- | -- | 171,973 |
| Streets and transportation | -- | -- | -- | -- |
| Health and sanitation | -- | -- | -- | -- |
| Administrative and general | -- | -- | -- | -- |
| Social services | -- | -- | -- | -- |
| Economic development | -- | 2,733,823 | 258,198 | -- |
| Total expenditures | -- | 2,733,823 | 258,198 | 171,973 |
| Excess (deficiency) of revenues over (under) expenditures | 670 | 43,747 | -- | ( 54,985) |
| **OTHER FINANCING SOURCES (USES)** | | | | |
| Transfers in | 50,000 | -- | -- | -- |
| Transfers (out) | -- | -- | -- | -- |
| Total other financing sources (uses) | 50,000 | -- | -- | -- |
| Net change in fund balances | 50,670 | 43,747 | -- | ( 54,985) |
| Fund balances - beginning | 25,285 | 259,831 | -- | 54,985 |
| Fund balances - ending | $ 75,955 | $ 303,578 | $ -- | $ -- |

| Municipal Beautification | Special Demolition | Sister Cities | Solid Waste | Police & Fire Donations | Asset Forfeiture | Municipal Court |
|---|---|---|---|---|---|---|
| $ -- | $ -- | $ -- | $ -- | $ -- | $ -- | $ -- |
| -- | -- | -- | -- | -- | -- | -- |
| 6,295 | 14,307 | -- | -- | -- | -- | -- |
| -- | -- | -- | 3,870,893 | -- | -- | -- |
| -- | -- | -- | -- | -- | 22,472 | 712,285 |
| 290 | 1,139 | 3 | 21,432 | 569 | 426 | -- |
| -- | -- | -- | -- | 40,080 | -- | -- |
| -- | -- | -- | -- | -- | -- | -- |
| 6,585 | 15,446 | 3 | 3,892,325 | 40,649 | 22,898 | 712,285 |
| -- | -- | -- | -- | -- | -- | 17,064 |
| -- | -- | -- | -- | 20,074 | 26,272 | -- |
| 9,578 | -- | -- | -- | -- | -- | -- |
| -- | -- | -- | 1,047,241 | -- | -- | -- |
| -- | -- | -- | -- | -- | -- | 13,806 |
| -- | -- | -- | -- | -- | -- | 231,508 |
| -- | -- | -- | -- | -- | -- | -- |
| 9,578 | -- | -- | 1,047,241 | 20,074 | 26,272 | 262,378 |
| ( 2,993) | 15,446 | 3 | 2,845,084 | 20,575 | ( 3,374) | 449,907 |
| -- | -- | -- | -- | -- | -- | -- |
| -- | -- | -- | ( 2,700,000) | -- | ( 15,679) | ( 454,722) |
| -- | -- | -- | ( 2,700,000) | -- | ( 15,679) | ( 454,722) |
| ( 2,993) | 15,446 | 3 | 145,084 | 20,575 | ( 19,053) | ( 4,815) |
| 18,420 | 78,810 | 1,176 | 1,153,975 | 31,586 | 42,045 | 5,370 |
| $ 15,427 | $ 94,256 | $ 1,179 | $ 1,299,059 | $ 52,161 | $ 22,992 | $ 555 |

| Human Rights | Rental Rehabilitation | Department of Transportation Grant | Local Law Enforcement Block Grant | Metro Loan | Police Grants | Total Nonmajor Special Revenue Funds |
|---|---|---|---|---|---|---|
| $ 30,170 | $ -- | $ 1,386,965 | $ 142,001 | $ -- | $ 705,064 | $ 5,347,036 |
| -- | -- | -- | -- | 25,000 | 593 | 25,593 |
| -- | -- | -- | -- | -- | -- | 20,602 |
| -- | -- | -- | -- | -- | -- | 3,870,893 |
| -- | -- | -- | -- | -- | -- | 734,757 |
| -- | 239 | 202 | 1,879 | 4,397 | -- | 101,166 |
| -- | -- | -- | -- | -- | -- | 40,080 |
| -- | -- | -- | -- | 72 | -- | 72 |
| 30,170 | 239 | 1,387,167 | 143,880 | 29,469 | 705,657 | 10,140,199 |
| -- | -- | -- | -- | -- | -- | 17,064 |
| -- | -- | -- | 159,217 | -- | 629,498 | 1,007,034 |
| -- | -- | -- | -- | -- | -- | 9,578 |
| -- | -- | -- | -- | -- | -- | 1,047,241 |
| -- | -- | -- | -- | -- | -- | 13,806 |
| -- | -- | -- | -- | -- | -- | 231,508 |
| 30,170 | 22,476 | 1,410,506 | -- | 64 | -- | 4,455,237 |
| 30,170 | 22,476 | 1,410,506 | 159,217 | 64 | 629,498 | 6,781,468 |
| -- | ( 22,237) | ( 23,339) | ( 15,337) | 29,405 | 76,159 | 3,358,731 |
| -- | -- | -- | 11,687 | -- | 3,992 | 65,679 |
| -- | -- | -- | -- | -- | -- | ( 3,170,401) |
| -- | -- | -- | 11,687 | -- | 3,992 | ( 3,104,722) |
| -- | ( 22,237) | ( 23,339) | ( 3,650) | 29,405 | 80,151 | 254,009 |
| 16,219 | 576,796 | -- | 16,227 | 148,074 | ( 30,353) | 2,398,446 |
| $ 16,219 | $ 554,559 | $ ( 23,339) | $ 12,577 | $ 177,479 | $ 49,798 | $ 2,652,455 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING BALANCE SHEET - NONMAJOR GOVERNMENTAL - CAPITAL PROJECTS FUNDS
June 30, 2003

| | Infrastructure | Bridge | South Side Bridge Ramp | South Side Recreation | Civic Center Project |
|---|---|---|---|---|---|
| **ASSETS** | | | | | |
| **Current:** | | | | | |
| Cash and cash equivalents | $ 120,358 | $ 31,260 | $ -- | $ 8,080 | $ -- |
| Total assets | 120,358 | 31,260 | -- | 8,080 | -- |
| **LIABILITIES AND FUND BALANCES** | | | | | |
| **Liabilities:** | | | | | |
| Accounts payable | -- | -- | -- | -- | -- |
| Total liabilities | -- | -- | -- | -- | -- |
| **Fund balances:** | | | | | |
| Reserved for: | | | | | |
| Capital projects | 120,358 | 31,260 | -- | 8,080 | -- |
| Total fund balances | 120,358 | 31,260 | -- | 8,080 | -- |
| Total liabilities and fund balances | $ 120,358 | $ 31,260 | $ -- | $ 8,080 | $ -- |

| Civic Center Capital Improvement | Municipal Auditorium Capital Improvement | Center for Arts and Sciences | Soccer Field | General Maintenance | Public Safety | Total Nonmajor Capital Projects Funds |
|---|---|---|---|---|---|---|
| $ 454,307 | $ 123,943 | $ -- | $ 2,547 | $ 1,513,840 | $ 10,008 | $ 2,264,343 |
| 454,307 | 123,943 | -- | 2,547 | 1,513,840 | 10,008 | 2,264,343 |
| -- | -- | -- | -- | 70,185 | -- | 70,185 |
| -- | -- | -- | -- | 70,185 | -- | 70,185 |
| 454,307 | 123,943 | -- | 2,547 | 1,443,655 | 10,008 | 2,194,158 |
| 454,307 | 123,943 | -- | 2,547 | 1,443,655 | 10,008 | 2,194,158 |
| $ 454,307 | $ 123,943 | $ -- | $ 2,547 | $ 1,513,840 | $ 10,008 | $ 2,264,343 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES -
NONMAJOR GOVERNMENTAL - CAPITAL PROJECTS FUNDS
For the Fiscal Year Ended June 30, 2003

| | Infrastructure | Bridge | South Side Bridge Ramp | South Side Recreation | Civic Center Project |
|---|---|---|---|---|---|
| **REVENUES** | | | | | |
| Interest and investment earnings | $ 1,783 | $ 425 | $ 12,494 | $ 360 | $ -- |
| Reimbursements | -- | -- | -- | -- | -- |
| Miscellaneous | -- | -- | -- | -- | -- |
| Total revenues | 1,783 | 425 | 12,494 | 360 | -- |
| **EXPENDITURES:** | | | | | |
| Current: | | | | | |
| Capital projects | -- | -- | -- | -- | -- |
| Total expenditures | -- | -- | -- | -- | -- |
| Excess (deficiency) of revenues over (under) expenditures | 1,783 | 425 | 12,494 | 360 | -- |
| **OTHER FINANCING SOURCES (USES)** | | | | | |
| Transfers in | -- | -- | -- | -- | -- |
| Transfers (out) | -- | -- | ( 854,542) | -- | ( 124) |
| Contributions | -- | -- | -- | ( 25,000) | -- |
| Total other financing sources (uses) | -- | -- | ( 854,542) | ( 25,000) | ( 124) |
| Net change in fund balances | 1,783 | 425 | ( 842,048) | ( 24,640) | ( 124) |
| Fund balances - beginning | 118,575 | 30,835 | 842,048 | 32,720 | 124 |
| Fund balances - ending | $ 120,358 | $ 31,260 | $ -- | $ 8,080 | $ -- |

| Civic Center Capital Improvement | Municipal Auditorium Capital Improvement | Center for Arts and Sciences | Soccer Field | General Maintenance | Public Safety | Total Nonmajor Capital Projects Funds |
|---|---|---|---|---|---|---|
| $ 5,748 | $ 1,341 | $ 15,327 | $ 18 | $ 18,300 | $ 61 | $ 55,857 |
| -- | 54,773 | -- | -- | -- | -- | 54,773 |
| -- | -- | -- | -- | 90,000 | -- | 90,000 |
| 5,748 | 56,114 | 15,327 | 18 | 108,300 | 61 | 200,630 |
| -- | -- | 1,604,298 | -- | 3,266,966 | -- | 4,871,264 |
| -- | -- | 1,604,298 | -- | 3,266,966 | -- | 4,871,264 |
| 5,748 | 56,114 | ( 1,588,971) | 18 | ( 3,158,666) | 61 | ( 4,670,634) |
| 96,502 | -- | -- | -- | 3,151,077 | -- | 3,247,579 |
| ( 8,884) | -- | ( 17,292) | -- | ( 50,000) | ( 60) | ( 930,902) |
| -- | -- | -- | ( 1,014) | -- | -- | ( 26,014) |
| 87,618 | -- | ( 17,292) | ( 1,014) | 3,101,077 | ( 60) | 2,290,663 |
| 93,366 | 56,114 | ( 1,606,263) | ( 996) | ( 57,589) | 1 | ( 2,379,971) |
| 360,941 | 67,829 | 1,606,263 | 3,543 | 1,501,244 | 10,007 | 4,574,129 |
| $ 454,307 | $ 123,943 | $ -- | $ 2,547 | $ 1,443,655 | $ 10,008 | $ 2,194,158 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF FIDUCIARY NET ASSETS
AGENCY FUNDS
June 30, 2003

| | Metro Drug Enforcement Task Force | Pending Forfeiture | Civic Center Ticket | Police Asset & Liability | Totals |
|---|---|---|---|---|---|
| **ASSETS** | | | | | |
| Cash and cash equivalents | $ 42,517 | $ 406,022 | $ 219,238 | $ 6,274 | $ 674,051 |
| Investments, at fair value: | | | | | |
| Other investments | -- | -- | 496,830 | -- | 496,830 |
| Total assets | 42,517 | 406,022 | 716,068 | 6,274 | 1,170,881 |
| **LIABILITIES** | | | | | |
| Accounts payable | 42,517 | 406,022 | 716,068 | 6,274 | 1,170,881 |
| Total liabilities | $ 42,517 | $ 406,022 | $ 716,068 | $ 6,274 | $ 1,170,881 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF PLAN NET ASSETS
PENSION TRUST FUNDS
June 30, 2003

| | Pension Trust Funds | | |
|---|---|---|---|
| | Policemen's Pension and Relief | Firemen's Pension and Relief | Totals |
| **ASSETS** | | | |
| Non-pooled cash | $ 3,437,463 | $ 1,060,293 | $ 4,497,756 |
| Pooled cash | -- | -- | -- |
| Total cash | 3,437,463 | 1,060,293 | 4,497,756 |
| Investments, at fair value: | | | |
| Federal government securities | 1,897,387 | 2,479,645 | 4,377,032 |
| Managed bond funds | 8,534,124 | -- | 8,534,124 |
| Managed stock funds | -- | 2,790,104 | 2,790,104 |
| Total investments | 10,431,511 | 5,269,749 | 15,701,260 |
| Receivables: | | | |
| Interest receivable | 90,108 | 23,666 | 113,774 |
| Mortgage loans receivable | 7,900 | -- | 7,900 |
| Total receivables | 98,008 | 23,666 | 121,674 |
| Total assets | $ 13,966,982 | $ 6,353,708 | $ 20,320,690 |
| **LIABILITIES** | | | |
| Accounts payable | 11,108 | 3,022 | 14,130 |
| Benefits payable | -- | 335,081 | 335,081 |
| Total liabilities | 11,108 | 338,103 | 349,211 |
| **NET ASSETS** | | | |
| Net assets held in trust for pension benefits | $ 13,955,874 | $ 6,015,605 | $ 19,971,479 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
COMBINING STATEMENT OF CHANGES IN PLAN NET ASSETS
PENSION TRUST FUNDS
For the Fiscal Year Ended June 30, 2003

| | Pension Trust Funds | | |
|---|---|---|---|
| | Policemen's Pension and Relief | Firemen's Pension and Relief | Totals |
| **ADDITIONS:** | | | |
| Contributions: | | | |
| Employer | $ 1,265,982 | $ 1,997,344 | $ 3,263,326 |
| Plan members | 469,866 | 528,327 | 998,193 |
| Insurance premium surtax | 989,441 | 1,162,738 | 2,152,179 |
| Total contributions | 2,725,289 | 3,688,409 | 6,413,698 |
| Investment income: | | | |
| Net increase(decrease) in fair value of investments | 573,031 | ( 113,806) | 459,225 |
| Interest and dividends | 548,007 | 202,106 | 750,113 |
| Miscellaneous | - - | - - | - - |
| Less: investment expense | ( 42,919) | ( 18,593) | ( 61,512) |
| Net investment income | 1,078,119 | 69,707 | 1,147,826 |
| Total additions | 3,803,408 | 3,758,116 | 7,561,524 |
| **DEDUCTIONS:** | | | |
| Benefits | 3,497,408 | 3,982,182 | 7,479,590 |
| Administrative expenses | 14,242 | 24,293 | 38,535 |
| Refunds of contributions | 55,916 | - - | 55,916 |
| Total deductions | 3,567,566 | 4,006,475 | 7,574,041 |
| Change in net assets | 235,842 | ( 248,359) | ( 12,517) |
| Net assets held in trust for pension benefits: | | | |
| Beginning of year | 13,720,032 | 6,263,964 | 19,983,996 |
| End of year | $ 13,955,874 | $ 6,015,605 | $ 19,971,479 |

*SINGLE AUDIT REPORTING PACKAGE*

State of West Virginia
Office of the State Auditor
1900 Kanawha Boulevard, East
State Capitol Complex, Building 1, Room W-100
Charleston, West Virginia 25305

Glen B. Gainer III
State Auditor

Telephone: (304) 558-2251
FAX: (304) 558-5200
Internet: http://www.wvauditor.com

# REPORT ON COMPLIANCE AND ON INTERNAL CONTROL OVER FINANCIAL REPORTING BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

Honorable Mayor and Council
Municipality of Charleston
Charleston, West Virginia 25330

We have audited the financial statements of the Municipality of Charleston, West Virginia, as of and for the year ended June 30, 2003, and have issued our report thereon, dated February 5, 2004. In that report, our opinion was qualified because other auditors determined the Charleston Sanitary Board failed to properly reflect the value of the donated sewer system. We conducted our audit in accordance with auditing standards generally accepted in the United States of America, and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States.

## Compliance

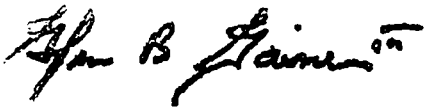
As part of obtaining reasonable assurance about whether the Municipality's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*. However, we have reported an immaterial instance of noncompliance on the Schedule of Findings and Questioned Costs as item 2003-1.

**Internal Control Over Financial Reporting**

In planning and performing our audit, we considered the Municipality's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control over financial reporting. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over financial reporting and its operation that we consider to be material weaknesses. However, we noted other matters that we have reported to management in a separate letter dated February 5, 2004.

This report is intended solely for the information and use of the audit committee, management, others within the organization, and City Council, and federal and state awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Respectfully submitted,



Glen B. Gainer III
West Virginia State Auditor

February 5, 2004

State of West Virginia
Office of the State Auditor
1900 Kanawha Boulevard, East
State Capitol Complex, Building 1, Room W-100
Charleston, West Virginia 25305

Glen B. Gainer III
State Auditor

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# REPORT ON COMPLIANCE WITH REQUIREMENTS APPLICABLE TO EACH MAJOR PROGRAM AND ON INTERNAL CONTROL OVER COMPLIANCE IN ACCORDANCE WITH OMB CIRCULAR A-133 AND SUPPLEMENTARY SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS

Honorable Mayor and Council
Municipality of Charleston
Charleston, West Virginia 25330

## Compliance

We have audited the compliance of the Municipality of Charleston, West Virginia, with the types of compliance requirements described in the U.S. Office of Management and Budget (OMB) Circular A-133, Compliance Supplement that are applicable to its major federal program for the year ended June 30, 2003. The Municipality's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs. Compliance with the requirements of laws, regulations, contracts and grants applicable to each of its major federal programs is the responsibility of the Municipality's management. Our responsibility is to express an opinion on the Municipality's compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the Municipality's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination on the Municipality's compliance with those requirements.

In our opinion, the Municipality complied, in all material respects, with the requirements referred to above that are applicable to each of its major federal programs for the year ended June 30, 2003.

## Internal Control Over Compliance

The management of the Municipality is responsible for establishing and maintaining effective internal control over compliance with requirements of laws, regulations, contracts and grants applicable to federal programs. In planning and performing our audit, we considered the Municipality's internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133.

Our consideration of the internal control over compliance would not necessarily disclose all matters in the internal control that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that noncompliance with the applicable requirements of laws, regulations, contracts and grants that would be material in relation to a major federal program being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over compliance and its operation that we consider to be material weaknesses.

## Schedule of Expenditures of Federal Awards

We have audited the financial statements of the Municipality, as of and for the year ended June 30, 2003, and issued our report thereon dated February 5, 2004. Our audit was performed for the purpose of forming opinions on the financial statements that collectively comprise the Municipality of Charleston, West Virginia's financial statements. The Sanitary Board, a component unit of the municipality, was audited by other auditors whose report was qualified due to the Sanitary Board not reflecting certain fixed assets at fair value on the date of donation. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by OMB Circular A-133 and is not a required part of the basic financial statements of the Municipality of Charleston, West Virginia. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated, in all material respects, in relation to the basic financial statements taken as a whole.

This report is intended solely for the information and use of the audit committee, management, others within the organization, City Council, and federal and state awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Respectfully submitted,

Glen B. Gainer III
West Virginia State Auditor

February 5, 2004

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For the Fiscal Year Ended June 30, 2003

| | Federal CFDA Number | Pass-Through Entity Number | Total Expenditures |
|---|---|---|---|
| **U. S. Department of Housing and Urban Development** | | | |
| Direct programs: | | | |
| Program Title | | | |
| *Community Development Block Grants-Entitlement Grants* | 14.218 | | $ 2,622,417 |
| *Emergency Shelter Grants Program* | 14.231 | | 85,118 |
| *Supportive Housing Program* | 14.235 | | 235,146 |
| *HOME Investment Partnerships Program* | 14.239 | | 732,648 |
| Pass-through Programs From: | | | |
| West Virginia Development Office | | | |
| Program Title | | | |
| *Emergency Shelter Grants Program* | 14.231 | S-01-DC-54-001 | 23,639 |
| | | S-02-DC-54-001 | 103,653 |
| **Total U. S. Department of Housing and Urban Development** | | | $ 3,802,621 |
| **U. S. Department of Justice** | | | |
| Direct Programs: | | | |
| Program Title | | | |
| *Grants to Encourage Arrest Policies and Enforcement of Protection Orders* | 16.590 | | 118,815 |
| *Local Law Enforcement Block Grants Program* | 16.592 | | 159,217 |
| *High Intensity Drug Trafficking Area (HITA)* | 16.NA | | 11,325 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For the Fiscal Year Ended June 30, 2003

| | Federal CFDA Number | Pass-Through Entity Number | Total Expenditures |
|---|---|---|---|
| Pass-through Programs From: | | | |
| West Virginia Department of Criminal Justice Services | | | |
| Program Title | | | |
| *Juvenile Accountability Incentive Block Grants* | 16.523 | 01-A-D-101 | $ 41,000 |
| *Crime Victim Assistance* | 16.575 | C174037/G030624 | 2,500 |
| | | 00-VA-043 | 6,929 |
| | | 01-VA-028 | 27,875 |
| *Byrne Formula Grant Program* | 16.579 | 01-DC-03 | 29,069 |
| | | 02-DC-06 | 178,427 |
| *Violence Against Women Formula Grants* | 16.588 | 00-VAW-032 | 4,787 |
| | | 01-VAW-031 | 55,051 |
| *Local Law Enforcement Block Grants Program* | 16.592 | N/A | 5,000 |
| | | 01-JJV-003 | 7,036 |
| **Total U. S. Department of Justice** | | | $ 647,031 |
| **U.S. Department of Transportation** | | | |
| Pass-through Programs From: | | | |
| West Virginia Department of Transportation | | | |
| Direct programs: | | | |
| Program Title | | | |
| *Highway Planning and Construction* | 20.205 | TEA-OQ22(001)E | $ 19,357 |
| *State and Community Highway Safety* | 20.600 | F02-HS-04 | 57,523 |
| | | F00-HS-07 | 4,717 |
| | | F02-HS-05 | 42,361 |
| *Alcohol Traffic Safety and Drunk Driving Prevention Incentive Grants* | 20.601 | F02-J8-04 | 4,326 |
| | | CDDP 02-26 | 17 |
| | | CDDP 03-07 | 500 |
| | | CDDP 03-09 | 3,614 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For the Fiscal Year Ended June 30, 2003

| | Federal CFDA Number | Pass-Through Entity Number | Total Expenditures |
|---|---|---|---|
| *Occupant Protection* | 20.602 | F02-157INV2-05 | $ 5,997 |
| | | F03-J3-02 | 7,000 |
| **Total U.S. Department of Transportation** | | | $ 145,412 |
| **U.S. Federal Emergency Management Agency** | | | |
| Pass-through Programs From: | | | |
| West Virginia Office of Emergency Services | | | |
| Program Title | | | |
| *Flood Mitigation Assistance* | 83.536 | DR-1319WV-0006 | 171,973 |
| *State and Local All Hazards Emergency Operations Planning* | 83.562 | | 10,080 |
| *Citizen Corps* | 83.564 | | 6,120 |
| **Total U.S. Federal Emergency Management Agency** | | | $ 188,173 |
| **TOTAL FEDERAL AWARDS EXPENDITURES** | | | $ 4,783,237 |

NA- indicates the program number was not available

The accompanying notes are an integral part of this schedule.

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
NOTES OF SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For the Fiscal Year Ended June 30, 2003

## NOTE 1 - BASIS OF PRESENTATION

The accompanying schedule of expenditures of federal awards includes the federal grant activity of the Municipality of Charleston, West Virginia and is presented on the accrual basis of accounting. The information in this schedule is presented in accordance with the requirements of OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Therefore, some amounts presented in this schedule may differ from amounts presented in, or used in the preparation of the financial statements.

## NOTE 2 - SUBRECIPIENT DISBURSEMENTS

Of the federal expenditures presented in the schedule, the Municipality of Charleston, West Virginia provided federal awards to subrecipients as follows:

| Program Title | Federal CFDA Number | Amount Provided to Subrecipients |
|---|---|---|
| *HOME Investment Partnerships Program* | 14.239 | $ 49,000 |
| *Byrne Formula Grant Program* | 16.579 | 58,264 |
| *Violence Against Women Formula Grants* | 16.588 | 2,035 |
| *State and Community Highway Safety* | 20.600 | 2,565 |
| *Alcohol Traffic Safety and Drunk Driving Prevention Incentive Grants* | 20.601 | 7,558 |

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

Section I -Summary of Auditor's Results

**Financial Statements**

| | |
|---|---|
| Type of auditor's report issued: | Qualified |
| Internal Control over Financial Reporting: | |
| Material weakness identified? | No |
| Reportable condition identified that is not considered to be a material weakness? | No |
| Non compliance material to the financial statements noted? | No |
| **Federal Awards** | Unqualified |
| Internal Control over Major Programs: | |
| Material weakness identified? | No |
| Reportable condition identified that is not considered to be a material weakness? | No |
| Type of auditor's report issued on compliance for major programs: | Unqualified |
| Any audit findings disclosed that are required to be reported in accordance with § _.510(a) of Circular A-133? | No |

Identification of major programs:

| CFDA Numbers | Name of Federal Program |
|---|---|
| 14.218 | Community Development Block Grants-Entitlement Grants |
| 14.239 | HOME Investment Partnerships Program |
| 16.579 | Byrne Formula Grant Program |

| | |
|---|---|
| Dollar threshold used to distinguish between Type A and Type B Program: | $ 300,000 |
| Auditee qualify as a low-risk auditee? | No |

Section II -Financial Statement Findings

**Supplemental Pension Benefit**
**2003-1**

**CONDITION:**

It was noted during our examination that the Municipality of Charleston failed to correctly calculate the cost of living adjustment for the Police and Fire retirees.

**CRITERIA:**

West Virginia Code § 8-22-26a states in part that:

> ...."the supplemental benefit shall only be calculated on the allowable amount, which is the first fifteen thousand dollars of the total annual benefit paid."

**CAUSE:**

The municipality calculates the cost of living adjustment on the first fifteen thousand dollars of pension income plus prior years cost of living adjustments. The inclusion of prior years cost of living adjustments creates a cumulative effect which could exceed the maximum allowable amount, which is the first fifteen thousand dollars of the total benefits paid.

**EFFECT:**

The municipality, by incorrectly calculating the COLA, is overpaying some pension benefit payments in both the Policemen's and Firemen's Pension Funds.

**RECOMMENDATION:**

The municipality should review statute 8-22-26a concerning supplemental pension benefits and comply with the provisions set forth therein.

**AUDITED AGENCY'S RESPONSE:**

The municipal officials stated that they are waiting for a ruling from the West Virginia Attorney General's Office before a change in the calculation is made.

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

## Section III -Federal Award Findings and Questioned Costs

There were no findings at the single audit level for this audit

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
CORRECTIVE ACTION PLAN
FOR THE FISCAL YEAR ENDED JUNE 30, 2003

---

There were no findings at the federal program level therefore no corrective action plan is necessary.

MUNICIPALITY OF CHARLESTON, WEST VIRGINIA
SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS
For the Fiscal Year Ended June 30, 2003

Status of Prior Year Audit Findings

| Finding Number | Title | Status |
|---|---|---|
| 2002-1 | Supplemental Pension Benefits | Not Resolved |
| 2002-2 | Accounts/Taxes Receivable | Resolved |

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APPENDIX D

Form of Approving Bond Counsel Opinion

**[Letterhead of Jackson Kelly PLLC]**

February ____, 2005

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

Re: The City of Charleston, West Virginia
$2,655,000 Parking System Bond Anticipation Note, Series 2005

Ladies and Gentlemen:

We have acted as bond counsel to The City of Charleston, West Virginia (the "Issuer"), a municipal corporation, in connection with the issuance of its $2,655,000 Parking System Bond Anticipation Note, Series 2005, dated the date hereof (the "Note"). In such capacity, we have examined such law and such certified proceedings, certifications and other documents as we have deemed necessary to render this opinion.

The Note is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 12, Chapter 8, Article 16 and Chapter 13, Article 2E of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and under and pursuant to a Parking System Refunding Note and Bond Ordinance duly passed by the Issuer on January 18, 2005, effective February 7, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on February 7, 2005 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Note is authorized and issued. Capitalized terms used and not otherwise defined herein shall have the respective meanings given them in the Ordinance.

In connection with the issuance of the Note, the Issuer has executed a Tax Certificate, dated as of the date hereof (the "Tax Certificate"), which, among other things, sets forth restrictions on the investment and expenditure of the Note proceeds and earnings thereon, to ensure that the 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 Note from gross income for federal income tax purposes, are and will continue to be met.

Regarding questions of fact material to our opinion, we have relied upon representations of the Issuer contained in the herein-described documents and certifications

furnished to us by or on behalf of the Issuer (including certifications as to matters which are material to paragraph 4 below), without undertaking to verify the same by independent investigation.

The Note is issued in the form of one fully registered Note.

Based upon the foregoing, 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 the power to adopt the Ordinance, which has been duly and lawfully enacted and adopted by the Issuer, is in full force and effect and is valid and binding upon the Issuer and enforceable in accordance with its terms, and no other authorization for the Ordinance is required.

2. The Issuer is duly authorized to issue the Note, which Note has been duly and validly authorized and issued in accordance with the Act and in accordance with the Ordinance, and constitutes a valid, binding revenue obligation of the Issuer as provided in the Ordinance, payable and enforceable in accordance with their terms and the terms of the Ordinance and are entitled to the benefits of the Ordinance and of the Act.

3. The Note is unsecured and payable solely from the proceeds of the Issuer's Parking System Refunding Revenue Bonds, Series 2005 B, when, as and if issued, is not secured by the revenues of the Issuer's parking system, and does not constitute a debt or general obligation of the Issuer within the meaning of any constitutional or statutory provisions or limitations.

4. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, interest on the Note is not includable in the gross income of the owners thereof for federal income tax purposes and is not at item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. It should be noted, however, that interest on the Note held by a corporation may be subject indirectly to alternative minimum tax because of its inclusion in the adjusted current earnings of such corporate holder. The opinions set forth in the preceding sentences are subject to the condition that the Issuer comply, on a continuing basis, with all representations, covenants and certifications set forth in the Ordinance and the Tax Certificate and other documents relating thereto. Failure to comply with certain of such representations, covenants and certifications could cause the interest on the Note to be includable in a holder's gross income retroactive to the date of issuance of the Note. Except as described herein, we express no opinion regarding other federal tax consequences arising with respect to the Note.

5. Under the Act, as presently written and applied, the Note and any interest thereon is exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

It is to be understood that the rights of the owners of the Note and the enforceability of the Note, the Ordinance and the pledges set forth therein are limited bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, and by the exercise of judicial discretion. Further, we express no opinion regarding tax consequences arising with respect to the Note other than as expressly set forth herein.

We have not been engaged, or undertaken, to review the accuracy, completeness or sufficiency of the Official Statement or other offering material related to the Note (except to the extent, if any, stated in the Official Statement) and we express no opinion relating thereto.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

We have examined the executed and authenticated Note numbered NR-1 and in our opinion, the form of said Note and its execution and authentication are regular and proper.

Very truly yours,

**[Letterhead of Jackson Kelly PLLC]**

February ____, 2005

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

Re: The City of Charleston, West Virginia
$2,655,000 Parking System Refunding Revenue Bonds,
Series 2005 B

Ladies and Gentlemen:

We have acted as bond counsel to The City of Charleston, West Virginia (the "Issuer"), a municipal corporation, in connection with the issuance of its $2,655,000 Parking System Refunding Revenue Bonds, Series 2005 B, dated the date hereof (the "Bonds"). In such capacity, we have examined such law and such certified proceedings, certifications and other documents as we have deemed necessary to render this opinion.

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 8, Article 12, Chapter 8, Article 16 and Chapter 13, Article 2E of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and under and pursuant to a Parking System Refunding Note and Bond Ordinance duly passed by the Issuer on January 18, 2005, effective February 7, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on February 7, 2005 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued. Capitalized terms used and not otherwise defined herein shall have the respective meanings given them in the Ordinance.

In connection with the issuance of the Bonds, the Issuer has executed a Tax Certificate, dated as of the date hereof (the "Tax Certificate"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the 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.

Regarding questions of fact material to our opinion, we have relied upon representations of the Issuer contained in the herein-described documents and certifications furnished to us by or on behalf of the Issuer (including certifications as to matters which are material to paragraph 4 below), without undertaking to verify the same by independent investigation.

The Bonds are issued in the form of a series of fully registered Bonds.

Based upon the foregoing, 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 the power to enact the Ordinance, which has been duly and lawfully enacted and adopted by the Issuer, is in full force and effect and is valid and binding upon the Issuer and enforceable in accordance with its terms, and no other authorization for the Ordinance is required.

2. The Issuer is duly authorized to issue the Bonds, which Bonds have been duly and validly authorized and issued in accordance with the Act and in accordance with the Ordinance, and constitutes a valid, binding revenue obligation of the Issuer as provided in the Ordinance, payable and enforceable in accordance with their terms and the terms of the Ordinance and are entitled to the benefits of the Ordinance and of the Act.

3. The Bonds are secured by the Net Revenues of the Parking System and from funds on deposit in the Sinking Fund and Reserve Account, on parity with the Issuer's Parking System Refunding Revenue Bonds, Series 2005 A, all as more fully described in the Ordinance.

4. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, interest on the Bonds is not includable in the gross income of the owners thereof for federal income tax purposes and is not at item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. It should be noted, however, that interest on the Bonds held by a corporation may be subject indirectly to alternative minimum tax because of its inclusion in the adjusted current earnings of such corporate holder. The opinions set forth in the preceding sentences are subject to the condition that the Issuer comply, on a continuing basis, with all representations, covenants and certifications set forth in the Ordinance and the Tax Certificate and other documents relating thereto. Failure to comply with certain of such representations, covenants and certifications could cause the interest on the Bonds to be includable in a holder's gross income retroactive to the date of issuance of the Bonds. Except as described herein, we express no opinion regarding other federal tax consequences arising with respect to the Bonds.

5. Under the Act, as presently written and applied, 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.

It is to be understood that the rights of the owners of the Bonds and the enforceability of the Bonds, the Ordinance and the pledges set forth therein are limited bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, and by the exercise of judicial discretion. Further, we express no opinion regarding tax consequences arising with respect to the Bonds other than as expressly set forth herein.

We have not been engaged, or undertaken, to review the accuracy, completeness or sufficiency of the Official Statement or other offering material related to the Bonds (except to the extent, if any, stated in the Official Statement) and we express no opinion relating thereto.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

We have examined the executed and authenticated Bond numbered BR-1 and in our opinion, the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

APPENDIX E

Form of Continuing Disclosure Certificate

This Continuing Disclosure Certificate (the "Certificate"), dated as of February 1, 2005, is provided by The City of Charleston, West Virginia (the "City"), under the terms of an Ordinance enacted by the City on February 7, 2005 (the "Ordinance"), authorizing the issuance of the $2,655,000 City of Charleston, Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes"), and when, as and if issued, the $2,655,000 City of Charleston, Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds" and, together with the Series 2005 Notes, the "Series 2005 Bonds"). The Series 2005 Bonds were sold pursuant to the terms of a Bond Purchase Agreement dated February 7, 2005, by and between the Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (collectively, the "Underwriters") and the City. Capitalized terms used in this Certificate shall have the respective meanings specified above or in Article IV hereof. The parties agree as follows:

ARTICLE I

The Undertaking

Section 1.1. Purpose. This Certificate shall constitute a written undertaking for the benefit of the holders of the Series 2005 Bonds and is being executed and delivered solely to assist the Underwriters in complying with subsection (b)(1) of the Rule.

Any filing under this Certificate may be made solely by transmitting such filing to the Texas Municipal Advisory Council (the "Central Post Office" or "MAC") as provided at http://www.disclosureusa.org unless the United States Securities and Exchange Commission has withdrawn the interpretive advice in its letter to the MAC dated September 7, 2004.

Section 1.2. Annual Financial Information. (a) The City shall provide Annual Financial Information with respect to each fiscal year of the City, commencing with the fiscal year ended June 30, 2005, by no later than 180 days after the end of each fiscal year, to the Central Post Office for delivery to each NRMSIR and the SID.

(b) The City shall provide, in a timely manner, notice of any failure of the City to provide the Annual Financial Information by the date specified in subsection (a) above to the Central Post Office for delivery to (i) either the MSRB or each NRMSIR, and (ii) the SID.

Section 1.3. Material Event Notices. (a) If a Material Event occurs, the City shall provide, in a timely manner, notice of each Material Event to the Central Post Office for delivery to (i) either the MSRB or each NRMSIR, (ii) the SID, and (iii) the Underwriters.

(b) Any notice of defeasance of the Series 2005 Bonds shall state whether the Series 2005 Bonds have been escrowed to maturity or to an earlier redemption date and the

timing of such maturity or redemption.

Section 1.4. Additional Disclosure Obligations. The City acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the City and that, under some circumstances, additional disclosures or other action in addition to those required by this Certificate may be required to enable the City to fully discharge all of its duties and obligations under such laws.

Section 1.5. Additional Information. Nothing in this Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Certificate or any other means of communication, or including any other information in any Annual Financial Information or notice of Material Event hereunder, in addition to that that is required by this Certificate. If the City chooses to do so, the City shall have no obligation under this Certificate to update such additional information or include it in any future Annual Financial Information or notice of a Material Event hereunder.

Section 1.6. No Previous Non-Compliance. The City represents that since December 1, 2004, it has not failed to comply in any material respect with any previous undertaking in a written contract or certificate, as entered into or issued by the City, specified in paragraph (b)(5)(i) of the Rule.

## ARTICLE II

## Operating Rules

Section 2.1. Reference to Other Documents. It shall be sufficient for purposes of this Certificate if the City provides Annual Financial Information by specific reference to documents (i) either (1) provided to the Central Post Office for delivery to each NRMSIR existing at the time of such reference and the SID or (2) filed with the SEC, or (ii) if such document is an Official Statement, available from the MSRB.

Section 2.2. Submission of Information. Annual Financial Information may be provided in one document or multiple documents, and at one time or in part from time to time.

Section 2.3. Transmission of Information and Notices. Unless otherwise required by law, the City shall employ such methods of information and notice transmission as it shall so determine. All deliveries to the Central Post Office shall be by electronic transmission at the website for the Central Post Office.

Section 2.4. Fiscal Year. The City's current fiscal year is the twelve-month period ending on June 30. The City shall promptly notice (i) the Central Post Office for delivery to each NRMSIR and the SID and (ii) the Underwriters of each change in its fiscal year.

## ARTICLE III

### Effective Date, Termination, Amendment and Enforcement

Section 3.1. Effective Date; Termination. (a) This Certificate shall be effective upon the issuance of the Series 2005 Bonds.

(b) The City's obligations under this Certificate shall terminate upon a legal defeasance, prior redemption or payment in full of all of the Series 2005 Bonds.

(c) This Certificate, or any provision hereof, shall be null and void in the event that the City (1) delivers to the Trustee an opinion of Counsel, addressed to the City and the Trustee, to the effect that those portions of the Rule which require this Certificate, or such provision, as the case may be, do not or no longer apply to the Series 2005 Bonds, whether because such portions of the Rule are invalid, have been repealed, or otherwise, as shall be specified in such opinion, and (2) delivers copies of such opinion to the Central Post Office for delivery to each NRMSIR and the SID.

Section 3.2. Amendment. (a) This Certificate may be amended, by written Agreement of the City, without the consent of the holders of the Series 2005 Bonds, if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the City or the type of business conducted thereby, (2) this Certificate as so amended would have complied with the requirements of the Rule as of the date of this Certificate, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) the State shall have delivered to the Trustee an opinion of Counsel, addressed to the City and the Trustee, to the same effect as set forth in clause (2) above, (4) the City shall have delivered to the Trustee an opinion of Counsel or a determination by a person, in each case unaffiliated with the City (such as bond counsel or the Trustee) and acceptable to the City, addressed to the City and the Trustee, to the effect that the amendment does not materially impair the interests of the holders of the Series 2005 Bonds, and (5) the City shall have delivered copies of such opinion(s) and amendment to the Central Post Office for delivery to each NRMSIR and the SID.

(b) In addition to the provisions contained in subsection (a) above, this Certificate may be amended, by written Agreement of the City, without the consent of the holders of the Series 2005 Bonds, if all of the following conditions are satisfied: (1) an amendment to the Rule is adopted, or a new or modified official interpretation of the Rule is issued, after the effective date of this Certificate which is applicable to this Certificate, (2) the City shall have delivered to the Purchaser an opinion of Counsel, addressed to the City and the Trustee, to the effect that performance by the City under this Certificate as so amended will not result in a violation of the Rule, and (3) the City shall have delivered copies of such opinion and amendment to the Central Post Office for delivery to each NRMSIR and the SID.

(c) To the extent any amendment to this Certificate results in a change in the

type of financial information or operating data provided pursuant to this Certificate, the first Annual Financial Information provided thereafter shall include a narrative explanation of the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

(d) If an amendment is made pursuant to Section 3.2(a) hereof due to a change in the accounting principles to be followed by the City in preparing its financial statements, the Annual Financial Information for the fiscal year in which the change is made shall provide written explanation of such change or changes.

Section 3.3. Benefit; Third-Party Beneficiaries; Enforcement. (a) The provisions of this Certificate shall inure solely to the benefit of the holders from time to time of the Series 2005 Bonds, except that beneficial owners of Series 2005 Bonds shall be third-party beneficiaries of this Certificate and shall be deemed to be holders of Series 2005 Bonds for purposes of Section 3.3(b) hereof. The provisions of this Certificate shall create no rights in any person or entity except as provided in this subsection (a).

(b) The obligations of the City to comply with the provisions of this Certificate shall be enforceable (i) in the case of enforcement of obligations to provide Annual Financial Information and Material Event notices, by any holder of Outstanding Bonds, or by the Trustee on behalf of the holders of Outstanding Bonds, or (ii), in the case of challenges to the adequacy of the Annual Financial Information so provided, by the Trustee on behalf of the holders of Outstanding Bonds; provided, however, that the Trustee shall not be required to take any enforcement action except at the direction of the holders of not less than 25% in aggregate principal amount of the Series 2005 Bonds at the time Outstanding who shall have provided the Trustee with adequate security and indemnity. The holders' and Trustee's rights to enforce the provisions of this Certificate shall be limited solely to right, by action in mandamus or for specific performance, to compel performance of the City's obligations under this Certificate.

(c) Any failure by the City or the Trustee to perform in accordance with this Certificate shall not constitute a default or an Event of Default under the Ordinance, and the rights and remedies provided by the Ordinance upon the occurrence of a default or an Event of Default shall not apply to any such failure.

(d) This Certificate shall be construed and interpreted in accordance with the laws of the State of West Virginia, and any suits and actions arising out of this Certificate shall be instituted in a court of competent jurisdiction in the State of West Virginia; provided, however, that to the extent this Certificate addresses matters of federal securities laws, including the Rule, this Certificate shall be construed in accordance with such federal securities laws and official interpretations thereof.

## ARTICLE IV

## Definitions

Section 4.1. Definitions. The following items used in this Certificate shall have

the following respective meanings:

(a) "Annual Financial Information" means, collectively (i) the City's Comprehensive Annual Financial Report (or any successive document which sets forth comprehensive information relating to the financial position of the City) and (ii) the information regarding amendments to this Certificate required pursuant to Sections 3.2(c) and (d) of this Certificate. Annual Financial Information shall include Audited Financial Statements, if available, or Unaudited Financial Statements.

(b) "Audited Financial Statements" means the annual financial statements, if any, of the City, audited by such auditor as shall then be required or permitted by West Virginia law. Audited Financial Statements shall be prepared in accordance with GAAP.

(c) "Central Post Office" shall mean the Texas Municipal Advisory Council, which shall receive Annual Reports and Listed Events and then electronically transmit them to the NRMSIRs and the State Repository.

(d) "Counsel" means Jackson Kelly PLLC, Charleston, West Virginia, or other nationally recognized bond counsel or counsel expert in federal securities law.

(e) "GAAP" means generally accepted accounting principles as prescribed from time to time for governmental units by the Governmental Accounting Standards Board, the Financial Accounting Standards Board, or any successor to the duties and responsibilities of either of them.

(f) "Material Event" means any of the following events with respect to the Series 2005 Bonds, whether relating to the City or otherwise, if material:

(i) principal and interest payment delinquencies;
(ii) non-payment related defaults;
(iii) unscheduled draws on debt service reserves reflecting financial difficulties;
(iv) unscheduled draws on credit enhancements reflecting financial difficulties;
(v) substitution of credit or liquidity providers, or their failure to perform;
(vi) adverse tax opinions or events affecting the tax-exempt status of the Series 2005 Bonds;
(vii) modifications to rights of security holders;
(viii) bond calls;
(ix) defeasances;
(x) release, substitution or sale of property securing repayment of the Series 2005 Bonds; and
(xi) rating changes.

(g) "MSRB" means the Municipal Securities Rulemaking Board established

pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934.

(h) "NRMSIR" means, at any time, a then-existing nationally recognized municipal securities information repository, as recognized from time to time by the SEC for the purposes referred to in the Rule. The NRMSIRs as of the date of this Certificate are Bloomberg Municipal Repository, DPC Data, Inc., FT Interactive Data and Standard & Poor's J. J. Kenny Repository. Filing information relating to such NRMSIRs is set forth in Exhibit B hereto.

(i) "Official Statement" means "final official statement," as defined in paragraph (f)(3) of the Rule.

(j) "Rule" means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934 (17 CFR Part 240, § 240.15c2-12), as in effect on the date of this Certificate, including any official interpretations thereof issued either before or after the effective date of this Certificate which are applicable to this Certificate.

(k) "SEC" means the United States Securities and Exchange Commission.

(l) "SID" means, at any time, a then-existing state information depository, if any, as operated or designated as such by or on behalf of the State of West Virginia for the purposes referred to in the rule. As of the date of this Certificate, there is no SID.

(m) "Unaudited Financial Statements" means the same as Audited Financial Statements, except that they shall not have been audited.

## ARTICLE V

## Miscellaneous

Section 5.1. Severability. If any one or more sections, clauses, sentences or parts hereof shall for any reason be questioned in any court of competent jurisdiction and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions hereof or thereof, or the Series 2005 Bonds, but shall be confined to the specific sections, clauses, sentences and parts so adjudged.

IN WITNESS WHEREOF, the City has caused this Certificate to be executed by its duly authorized representative as of the date first above written.

THE CITY OF CHARLESTON

By: _____
Mayor

EXHIBIT A

NOTICE TO REPOSITORIES
OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: City of Charleston

Name of Bond Issue: $2,655,000 City of Charleston, Parking System Bond Anticipation Notes, Series 2005, and when, as and if issued, $2,655,000 City of Charleston, Parking System Refunding Revenue Bonds, Series 2005 B

Date of Bond Issue: February 1, 2005, as to the Series 2005 Notes
April 1, 2005, as to the Series 2005 B Bonds

NOTICE IS HEREBY GIVEN that the City has not provided an Annual Report with respect to the above-named Series 2005 Bonds as required by Section 3(b) of this Continuing Disclosure Certificate dated as of February 1, 2005, to be provided. The City anticipates that the Annual Report will be filed by _____, 200_

Dated: _____, 20__

The City of Charleston, West Virginia

By: _____
Mayor

EXHIBIT B

Nationally Recognized Municipal Securities Information Repositories approved by the Securities and Exchange Commission as of February 1, 2005:

Central Post Office
Website: http://www.disclosureusa.org

Bloomberg Municipal Repository
100 Business Park Drive
Skillman, New Jersey 08558
Phone: (609) 279-3225
Fax: (609) 279-5962
http://www.bloomberg.com/markets/muni_contactinfo.html
Email: Munis@Bloomberg.com

DPC Data Inc.
One Executive Drive
Fort Lee, NJ 07024
Phone: (201) 346-0701
Fax: (201) 947-0107
http://www.dpcdata.com
Email: nrmsir@dpcdata.com

FT Interactive Data
Attn: NRMSIR
100 William Street
New York, New York 10038
Phone: (212) 771-6999
Fax: (212) 771-7390 (Secondary Market Information)
(212) 771-7391 (Primary Market Information)
http://www.interactivedata.com
Email: NRMSIR@FTID.com

Standard & Poor's J. J. Kenny Repository
55 Water Street
45th Floor
New York, NY 10041
Phone: (212) 438-4595
Fax: (212) 438-3975
www.jjkenny.com/jjkenny/pser_descrip_data_rep.html
Email: nrmsir_repository@sandp.com

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# CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Certificate"), dated as of April 1, 2005, is provided by The City of Charleston, West Virginia (the "City"), under the terms of an Ordinance enacted by the City on February 7, 2005, as supplemented by a Supplemental Resolution duly adopted by the City on February 7, 2005 (collectively, the "Ordinance"), authorizing the issuance of $2,655,000 City of Charleston, Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds"). The Series 2005 B Bonds were sold pursuant to the terms of a Bond Purchase Agreement dated February 7, 2005, by and between the Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated (collectively, the "Underwriters") and the City. Capitalized terms used in this Certificate shall have the respective meanings specified above or in Article IV hereof. The parties agree as follows:

## ARTICLE I

## The Undertaking

Section 1.1. Purpose. This Certificate shall constitute a written undertaking for the benefit of the holders of the Series 2005 B Bonds and is being executed and delivered solely to assist the Underwriters in complying with subsection (b)(1) of the Rule.

Any filing under this Certificate may be made solely by transmitting such filing to the Texas Municipal Advisory Council (the "Central Post Office" or "MAC") as provided at http://www.disclosureusa.org unless the United States Securities and Exchange Commission has withdrawn the interpretive advice in its letter to the MAC dated September 7, 2004.

Section 1.2. Annual Financial Information. (a) The City shall provide Annual Financial Information with respect to each fiscal year of the City, commencing with the fiscal year ended June 30, 2005, by no later than 180 days after the end of each fiscal year, to the Central Post Office for delivery to each NRMSIR and the SID.

(b) The City shall provide, in a timely manner, notice of any failure of the City to provide the Annual Financial Information by the date specified in subsection (a) above to the Central Post Office for delivery to (i) either the MSRB or each NRMSIR, and (ii) the SID.

Section 1.3. Material Event Notices. (a) If a Material Event occurs, the City shall provide, in a timely manner, notice of each Material Event to the Central Post Office for delivery to (i) either the MSRB or each NRMSIR, (ii) the SID, and (iii) the Underwriters.

(b) Any notice of defeasance of the Series 2005 B Bonds shall state whether the Series 2005 B Bonds have been escrowed to maturity or to an earlier redemption date and the timing of such maturity or redemption.

Section 1.4. Additional Disclosure Obligations. The City acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the

City and that, under some circumstances, additional disclosures or other action in addition to those required by this Certificate may be required to enable the City to fully discharge all of its duties and obligations under such laws.

Section 1.5. Additional Information. Nothing in this Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Certificate or any other means of communication, or including any other information in any Annual Financial Information or notice of Material Event hereunder, in addition to that that is required by this Certificate. If the City chooses to do so, the City shall have no obligation under this Certificate to update such additional information or include it in any future Annual Financial Information or notice of a Material Event hereunder.

Section 1.6. No Previous Non-Compliance. The City represents that since December 1, 2004, it has not failed to comply in any material respect with any previous undertaking in a written contract or certificate, as entered into or issued by the City, specified in paragraph (b)(5)(i) of the Rule.

## ARTICLE II

## Operating Rules

Section 2.1. Reference to Other Documents. It shall be sufficient for purposes of this Certificate if the City provides Annual Financial Information by specific reference to documents (i) either (1) provided to the Central Post Office for delivery to each NRMSIR existing at the time of such reference and the SID or (2) filed with the SEC, or (ii) if such document is an Official Statement, available from the MSRB.

Section 2.2. Submission of Information. Annual Financial Information may be provided in one document or multiple documents, and at one time or in part from time to time.

Section 2.3. Transmission of Information and Notices. Unless otherwise required by law, the City shall employ such methods of information and notice transmission as it shall so determine. All deliveries to the Central Post Office shall be by electronic transmission at the website for the Central Post Office.

Section 2.4. Fiscal Year. The City's current fiscal year is the twelve-month period ending on June 30. The City shall promptly notice (i) the Central Post Office for delivery to each NRMSIR and the SID and (ii) the Underwriters of each change in its fiscal year.

## ARTICLE III

## Effective Date, Termination, Amendment and Enforcement

Section 3.1. Effective Date; Termination. (a) This Certificate shall be effective upon the issuance of the Series 2005 B Bonds.

(b) The City's obligations under this Certificate shall terminate upon a legal defeasance, prior redemption or payment in full of all of the Series 2005 B Bonds.

(c) This Certificate, or any provision hereof, shall be null and void in the event that the City (1) delivers to the Trustee an opinion of Counsel, addressed to the City and the Trustee, to the effect that those portions of the Rule which require this Certificate, or such provision, as the case may be, do not or no longer apply to the Series 2005 B Bonds, whether because such portions of the Rule are invalid, have been repealed, or otherwise, as shall be specified in such opinion, and (2) delivers copies of such opinion to the Central Post Office for delivery to each NRMSIR and the SID.

Section 3.2. Amendment. (a) This Certificate may be amended, by written Agreement of the City, without the consent of the holders of the Series 2005 B Bonds, if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the City or the type of business conducted thereby, (2) this Certificate as so amended would have complied with the requirements of the Rule as of the date of this Certificate, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) the State shall have delivered to the Trustee an opinion of Counsel, addressed to the City and the Trustee, to the same effect as set forth in clause (2) above, (4) the City shall have delivered to the Trustee an opinion of Counsel or a determination by a person, in each case unaffiliated with the City (such as bond counsel or the Trustee) and acceptable to the City, addressed to the City and the Trustee, to the effect that the amendment does not materially impair the interests of the holders of the Series 2005 B Bonds, and (5) the City shall have delivered copies of such opinion(s) and amendment to the Central Post Office for delivery to each NRMSIR and the SID.

(b) In addition to the provisions contained in subsection (a) above, this Certificate may be amended, by written Agreement of the City, without the consent of the holders of the Series 2005 B Bonds, if all of the following conditions are satisfied: (1) an amendment to the Rule is adopted, or a new or modified official interpretation of the Rule is issued, after the effective date of this Certificate which is applicable to this Certificate, (2) the City shall have delivered to the Purchaser an opinion of Counsel, addressed to the City and the Trustee, to the effect that performance by the City under this Certificate as so amended will not result in a violation of the Rule, and (3) the City shall have delivered copies of such opinion and amendment to the Central Post Office for delivery to each NRMSIR and the SID.

(c) To the extent any amendment to this Certificate results in a change in the type of financial information or operating data provided pursuant to this Certificate, the first Annual Financial Information provided thereafter shall include a narrative explanation of the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

(d) If an amendment is made pursuant to Section 3.2(a) hereof due to a change in the accounting principles to be followed by the City in preparing its financial statements, the

Annual Financial Information for the fiscal year in which the change is made shall provide written explanation of such change or changes.

Section 3.3. Benefit; Third-Party Beneficiaries; Enforcement. (a) The provisions of this Certificate shall inure solely to the benefit of the holders from time to time of the Series 2005 B Bonds, except that beneficial owners of Series 2005 B Bonds shall be third-party beneficiaries of this Certificate and shall be deemed to be holders of Series 2005 B Bonds for purposes of Section 3.3(b) hereof. The provisions of this Certificate shall create no rights in any person or entity except as provided in this subsection (a).

(b) The obligations of the City to comply with the provisions of this Certificate shall be enforceable (i) in the case of enforcement of obligations to provide Annual Financial Information and Material Event notices, by any holder of Outstanding Bonds, or by the Trustee on behalf of the holders of Outstanding Bonds, or (ii), in the case of challenges to the adequacy of the Annual Financial Information so provided, by the Trustee on behalf of the holders of Outstanding Bonds; provided, however, that the Trustee shall not be required to take any enforcement action except at the direction of the holders of not less than 25% in aggregate principal amount of the Series 2005 B Bonds at the time Outstanding who shall have provided the Trustee with adequate security and indemnity. The holders' and Trustee's rights to enforce the provisions of this Certificate shall be limited solely to right, by action in mandamus or for specific performance, to compel performance of the City's obligations under this Certificate.

(c) Any failure by the City or the Trustee to perform in accordance with this Certificate shall not constitute a default or an Event of Default under the Ordinance, and the rights and remedies provided by the Ordinance upon the occurrence of a default or an Event of Default shall not apply to any such failure.

(d) This Certificate shall be construed and interpreted in accordance with the laws of the State of West Virginia, and any suits and actions arising out of this Certificate shall be instituted in a court of competent jurisdiction in the State of West Virginia; provided, however, that to the extent this Certificate addresses matters of federal securities laws, including the Rule, this Certificate shall be construed in accordance with such federal securities laws and official interpretations thereof.

## ARTICLE IV

## Definitions

Section 4.1. Definitions. The following items used in this Certificate shall have the following respective meanings:

(a) "Annual Financial Information" means, collectively (i) the City's Comprehensive Annual Financial Report (or any successive document which sets forth comprehensive information relating to the financial position of the City) and (ii) the information regarding amendments to this Certificate required pursuant to Sections 3.2(c) and (d) of this

Certificate. Annual Financial Information shall include Audited Financial Statements, if available, or Unaudited Financial Statements.

(b) "Audited Financial Statements" means the annual financial statements, if any, of the City, audited by such auditor as shall then be required or permitted by West Virginia law. Audited Financial Statements shall be prepared in accordance with GAAP.

(c) "Central Post Office" shall mean the Texas Municipal Advisory Council, which shall receive Annual Reports and Listed Events and then electronically transmit them to the NRMSIRs and the State Repository.

(d) "Counsel" means Jackson Kelly PLLC, Charleston, West Virginia, or other nationally recognized bond counsel or counsel expert in federal securities law.

(e) "GAAP" means generally accepted accounting principles as prescribed from time to time for governmental units by the Governmental Accounting Standards Board, the Financial Accounting Standards Board, or any successor to the duties and responsibilities of either of them.

(f) "Material Event" means any of the following events with respect to the Series 2005 B Bonds, whether relating to the City or otherwise, if material:

(i) principal and interest payment delinquencies;
(ii) non-payment related defaults;
(iii) unscheduled draws on debt service reserves reflecting financial difficulties;
(iv) unscheduled draws on credit enhancements reflecting financial difficulties;
(v) substitution of credit or liquidity providers, or their failure to perform;
(vi) adverse tax opinions or events affecting the tax-exempt status of the Series 2005 B Bonds;
(vii) modifications to rights of security holders;
(viii) bond calls;
(ix) defeasances;
(x) release, substitution or sale of property securing repayment of the Series 2005 B Bonds; and
(xi) rating changes.

(g) "MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934.

(h) "NRMSIR" means, at any time, a then-existing nationally recognized municipal securities information repository, as recognized from time to time by the SEC for the purposes referred to in the Rule. The NRMSIRs as of the date of this Certificate are Bloomberg

Municipal Repository, DPC Data, Inc., FT Interactive Data and Standard & Poor's J. J. Kenny Repository. Filing information relating to such NRMSIRs is set forth in Exhibit B hereto.

(i) "Official Statement" means "final official statement," as defined in paragraph (f)(3) of the Rule.

(j) "Rule" means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934 (17 CFR Part 240, § 240.15c2-12), as in effect on the date of this Certificate, including any official interpretations thereof issued either before or after the effective date of this Certificate which are applicable to this Certificate.

(k) "SEC" means the United States Securities and Exchange Commission.

(l) "SID" means, at any time, a then-existing state information depository, if any, as operated or designated as such by or on behalf of the State of West Virginia for the purposes referred to in the rule. As of the date of this Certificate, there is no SID.

(m) "Unaudited Financial Statements" means the same as Audited Financial Statements, except that they shall not have been audited.

## ARTICLE V

## Miscellaneous

Section 5.1. Severability. If any one or more sections, clauses, sentences or parts hereof shall for any reason be questioned in any court of competent jurisdiction and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions hereof or thereof, or the Series 2005 B Bonds, but shall be confined to the specific sections, clauses, sentences and parts so adjudged.

IN WITNESS WHEREOF, the City has caused this Certificate to be executed by its duly authorized representative as of the date first above written.

THE CITY OF CHARLESTON

By: _____
Mayor

EXHIBIT A

NOTICE TO REPOSITORIES
OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: City of Charleston

Name of Bond Issue: $2,655,000 City of Charleston, Parking System
Refunding Revenue Bonds, Series 2005 B

Date of Bond Issue: April 1, 2005

NOTICE IS HEREBY GIVEN that the City has not provided an Annual Report with respect to the above-named Series 2005 B Bonds as required by Section 3(b) of this Continuing Disclosure Certificate dated as of April 1, 2005, to be provided. The City anticipates that the Annual Report will be filed by _____, 200_

Dated: _____, 20__

The City of Charleston, West Virginia

By: _____
Mayor

EXHIBIT B

Nationally Recognized Municipal Securities Information Repositories approved by the Securities and Exchange Commission as of April 1, 2005:

Central Post Office
Website: http://www.disclosureusa.org

Bloomberg Municipal Repository
100 Business Park Drive
Skillman, New Jersey 08558
Phone: (609) 279-3225
Fax: (609) 279-5962
http://www.bloomberg.com/markets/muni_contactinfo.html
Email: Munis@Bloomberg.com

DPC Data Inc.
One Executive Drive
Fort Lee, NJ 07024
Phone: (201) 346-0701
Fax: (201) 947-0107
http://www.dpcdata.com
Email: nrmsir@dpcdata.com

FT Interactive Data
Attn: NRMSIR
100 William Street
New York, New York 10038
Phone: (212) 771-6999
Fax: (212) 771-7390 (Secondary Market Information)
(212) 771-7391 (Primary Market Information)
http://www.interactivedata.com
Email: NRMSIR@FTID.com

Standard & Poor's J. J. Kenny Repository
55 Water Street
45th Floor
New York, NY 10041
Phone: (212) 438-4595
Fax: (212) 438-3975
www.jjkenny.com/jjkenny/pser_descrip_data_rep.html
Email: nrmsir_repository@sandp.com

THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS
4. SIGNATURES
5. DELIVERY AND PAYMENT
6. NO ADVERSE FINANCIAL CHANGE
7. MEETINGS
8. INCUMBENCY AND OFFICIAL NAME
9. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
10. INSURANCE
11. OFFICIAL STATEMENT CERTIFICATION
12. CERTIFICATIONS UNDER BOND PURCHASE AGREEMENT SECTION 8(C)(5)
13. DESIGNATION OF REGISTRAR, PAYING AGENT AND DEPOSITORY BANK
14. IRS INFORMATION RETURN
15. SPECIMEN BONDS
16. RELIANCE
17. CONFLICTS OF INTEREST
18. COUNTERPARTS

We, the undersigned Mayor and City Clerk of The City of Charleston, West Virginia (the "Issuer"), and the undersigned Special Counsel to the Issuer, hereby certify in connection with The City of Charleston, West Virginia Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance duly enacted on February 7, 2005, as supplemented by a Supplemental Resolution duly adopted on February 7, 2005, and a Certificate of Determination dated March 23, 2005 (collectively, the "Ordinance"), and the Bond Purchase Agreement dated February 7, 2005 (the "Bond Purchase Agreement"), by and between the Issuer and Crews & Associates, Inc. on behalf of itself and Ferris, Baker Watts, Incorporated (collectively, the "Underwriter").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or threatened, restraining, enjoining, or affecting in any manner the issuance and delivery of the Series 2005 B Bonds, or the collection of the Gross Revenues of the System nor in any manner questioning the proceedings and authority by which the Issuer authorized the issuance and sale of the Series 2005 B Bonds, nor in any manner affecting the validity or enforceability of the Series 2005 B Bonds, the Ordinance, the Bond Purchase Agreement or

any agreement or instrument relating thereto, used or contemplated by the Bond Purchase Agreement or any provisions made or authorized for the payment of the Series 2005 B Bonds; nor in any manner questioning the valid existence of the Issuer, the City Council or the authority or titles of the Mayor, City Clerk, and the council members of the Issuer to their respective offices; nor in any manner questioning any proceeding, procedure, action or thing followed, taken or done in connection with the issuance, sale and delivery of the Series 2005 B Bonds, which is not set forth in the Official Statement relating to the Series 2005 B Bonds.

3. GOVERNMENTAL APPROVALS: All applicable and necessary approvals and certificates required by law for the issuance of the Series 2005 B Bonds have been or will be duly and timely obtained and remain in full force and effect.

4. SIGNATURES: As of the date hereof, the Series 2005 B Bonds were duly signed by the manual signature of the Mayor and the official seal of the Issuer, which seal is impressed upon this Certificate, was impressed thereon and attested by manual signature of the City Clerk of the Issuer.

5. DELIVERY AND PAYMENT: The undersigned Mayor did, on the date hereof, deliver to the Underwriter, the entire issue of the Series 2005 B Bonds, in various denominations and numbered BR-1 to BR-9, inclusive. Payment for the Series 2005 B Bonds was made by delivery to the Issuer of its Parking System Bond Anticipation Notes, Series 2005 in exchange for the Series 2005 B Bonds.

6. NO ADVERSE FINANCIAL CHANGE: There has been no adverse change in the financial condition of the Issuer or the System of the Issuer since June 30, 2004.

7. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Series 2005 B Bonds, the operation of the System, including without limitation, the imposition of rates and charges, were authorized or enacted at meetings of the Council of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Council of the Issuer and all applicable statutes, including without limitation, Chapter 6, Article 9A of the Code of West Virginia, 1931, as amended, and a quorum of duly elected, appointed, qualified and acting members of the Council 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.

8. 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 twenty-six 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 | 06/16/03 | 06/21/07 |
| City Clerk | James M. Reishman | 06/22/99 | 06/21/07 |
| Treasurer | Victor Grigoraci | 06/16/03 | 06/21/07 |
| Council Member | Patrick Jones | 06/16/03 | 06/21/07 |
| Council Member | William Hanna | 03/22/04 | 06/21/07 |
| Council Member | James "Moses" Lanham | 06/16/03 | 06/21/07 |
| Council Member | Rev. James Ealy | 03/15/04 | 06/21/07 |
| Council Member | Teresa "Tricky" Reed | 06/16/03 | 06/21/07 |
| Council Member | Edward Talkington | 06/16/03 | 06/21/07 |
| Council Member | Paul James Monroe | 06/16/03 | 06/21/07 |
| Council Member | Bob White | 06/16/03 | 06/21/07 |
| Council Member | Betty Morton | 06/16/03 | 06/21/07 |
| Council Member | Archie Chestnut | 06/16/03 | 06/21/07 |
| Council Member | Marc Weintraub | 06/16/03 | 06/21/07 |
| Council Member | Jim Harris, Jr. | 06/16/03 | 06/21/07 |
| Council Member | Linda M. Nielsen | 06/16/03 | 06/21/07 |
| Council Member | Jack E. Harrison | 06/16/03 | 06/21/07 |
| Council Member | David Kent Higgins | 06/16/03 | 06/21/07 |
| Council Member | Brenda H. Robertson | 06/16/03 | 06/21/07 |
| Council Member | Bobby Reishman | 06/16/03 | 06/21/07 |
| Council Member | John Miller, Jr. | 06/16/03 | 06/21/07 |
| Council Member | Ditty L. Markham | 06/16/03 | 06/21/07 |
| Council Member | Cheryle Hall | 06/16/03 | 06/21/07 |
| Council Member | Michael Clowser | 06/16/03 | 06/21/07 |
| Council Member | J. Thomas Lane | 06/16/03 | 06/21/07 |
| Council Member | Charles W. Loeb, Jr. | 06/16/03 | 06/21/07 |
| Council Member | Jerry L. Ware | 06/16/03 | 06/21/07 |
| Council Member | Harry Deitzler | 06/24/03 | 06/21/07 |
| Council Member | Mark A. Sadd | 06/16/03 | 06/21/07 |
| Council Member | Mary Jean Davis | 06/16/03 | 06/21/07 |

The names of the duly appointed, qualified and acting members of the Parking Committee of the Issuer are as follows:

| | |
|---|---|
| Chairman: | Danny Jones, Mayor |
| Member: | Edward Talkington |
| Member: | Marc Weintraub |
| Member: | Linda M. Nielsen |
| Member: | Bobby Reishman |
| Member: | John Miller, Jr. |
| Member: | J. Thomas Lane |

| | |
|---|---|
| Member: | Charles W. Loeb, Jr. |
| Member: | Harry Deitzler |
| Member: | Mark A. Sadd |

The duly appointed and acting City Attorney for the Issuer is Paul D. Ellis, Esquire, of Charleston, West Virginia and the Special Attorney for the Issuer is Steptoe & Johnson PLLC, Charleston, West Virginia.

9. 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 Series 2005 B 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 February 7, 2005, 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.

10. INSURANCE: The Issuer will maintain all insurance required under the Ordinance.

11. OFFICIAL STATEMENT CERTIFICATION: At and since the date of the Official Statement nothing has come to the attention of any signer hereof which would lead any such signer to believe that the Official Statement contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

12. CERTIFICATIONS UNDER BOND PURCHASE AGREEMENT SECTION 8(c)(5): In addition to the foregoing, the undersigned hereby certifies, as of the date hereof, that: (i) the representations and warranties of the Issuer contained in the Bond Purchase Agreement are true and correct in all material respects on and as of the date of the Closing as if made on the date of the Closing; (ii) (a) except as set forth in the Official Statement, no litigation is pending or, to their knowledge, threatened in any court to restrain or enjoin the issuance or delivery of any of the Series 2005 B Bonds, or in any way contesting or affecting the validity of the Series 2005 B Bonds, the Ordinance, or the Bond Purchase Agreement, or contesting the powers of the Issuer or any authority for the issuance of the Series 2005 B Bonds or the Ordinance, and (b) except as set forth in the Official Statement, there is no litigation pending, or, to the knowledge of the Mayor, threatened against the Issuer in any way

affecting the existence of the Issuer or the titles of its officers to their respective offices, or seeking to restrain or to enjoin the issuance or delivery of the Series 2005 B Bonds, or the collection of revenues and assets of the Issuer pledged or to be pledged to pay the principal of and interest on the Series 2005 B Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Series 2005 B Bonds, the Ordinance or the Bond Purchase Agreement, or contesting the powers of the Issuer with respect to the Series 2005 B Bonds, the Ordinance or the Bond Purchase Agreement or any transaction described in or contemplated by the Official Statement, which certificates shall be in form and substance acceptable to us; and (iii) to the best of our knowledge, no event affecting the Issuer has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purposes 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 in any respect.

13. DESIGNATION OF REGISTRAR, PAYING AGENT AND DEPOSITORY BANK: The Issuer hereby confirms the appointment of United Bank, Inc., Charleston, West Virginia, as the Registrar and the Depository Bank, and the West Virginia Municipal Bond Commission as Paying Agent.

14. IRS INFORMATION RETURN: On the date hereof, the undersigned Mayor did officially sign a properly completed IRS Form 8038-G for the Series 2005 B Bonds and will cause such executed Form 8038-G to be filed in a timely manner with the applicable Internal Revenue Service Center. The information set forth in such Form 8038-G is true, correct and complete in all respects.

15. SPECIMEN BONDS: Attached hereto as Exhibit A is a specimen of the Series 2005 B Bonds which, except as to execution and authentication, is identical in all respects with the form attached to the Ordinance.

16. RELIANCE: The undersigned acknowledge that it is intended that interest on the Series 2005 B Bonds be exempt from federal income tax in the hands of the owners thereof, that the firm of Jackson Kelly PLLC is rendering opinions on the date hereof to said effect and with respect to other matters, and that, in rendering such opinions, said firm is relying, among other things, upon the statements made herein. Said firm is entitled to rely upon such statements.

17. CONFLICT OF INTEREST: No member, officer or employee of the Issuer or the City Council 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 to any contractor supplying the Issuer, relating to the Series 2005 B Bonds or the Ordinance, 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.

18. COUNTERPARTS: This Certificate may be executed in counterparts and all such parts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of The City of Charleston, West Virginia, on this 1st day of April, 2005.

[SEAL]

| Signature | Official Title |
| --- | --- |
| | Mayor |
| | City Clerk |
| | Special City Attorney |

EXHIBIT A

See Specimen Series 2005 B Bond (Tab No. 6).

THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

CERTIFICATE OF UNDERWRITER

The undersigned, on behalf of itself and Ferris, Baker Watts, Incorporated, hereby certifies the following as of the date of this certificate, relating to the sale and delivery of the above-captioned bonds (the "Series 2005 B Bonds") by The City of Charleston (the "Issuer").

1. The Series 2005 B Bonds have been purchased for reoffering by, and are being delivered on this date to Ferris, Baker Watts, Incorporated and Crews & Associates, Inc. (collectively, the "Underwriter"). The Series 2005 B Bonds have been reoffered, and a substantial amount (at least 10 percent of each maturity) thereof sold to purchasers other than bond houses, brokers or other intermediaries at initial offering prices (net of accrued interest) not exceeding the respective prices of or, in the case of obligations sold on a yield basis, at yields (net of accrued interest) no lower than the respective yields on the Series 2005 B Bonds set forth on the cover of the Official Statement, dated February 7, 2005, relating to the Series 2005 B Bonds.

2. The undersigned certifies that, calculated in the manner provided by the Code and the Regulations thereunder, and on the basis of the Issue Price, the Yield on the Series 2005 B Bonds is 4.1918038% per annum. The foregoing yield refers to the discount rate which, when used in computing the present worth of all payments of principal and interest to be paid on the Series 2005 B Bonds, produces an amount equal to the Issue Price of the Series 2005 B Bonds. The calculation of the foregoing yield is made on the basis of semi-annual compounding using a 360-day year and upon the assumption that payments are made on the last day of each semi-annual interest period ending June 1 and December 1. The calculation of the foregoing yield has been made assuming no optional redemption of the Series 2005 B Bonds prior to the maturity date thereof.

3. To the best of the knowledge and belief of the undersigned, no other governmental obligations are being issued by the Issuer, or any related entity, at substantially the same time and pursuant to a common plan of financing and which will be paid out of substantially the same source of funds or which will have substantially the same claim to be paid out of substantially the same source of funds as the Series 2005 B Bonds or which will be paid directly or indirectly from proceeds derived from the sale of the Series 2005 B Bonds.

4. In our opinion, the Reserve Account for the Series 2005 B Bonds funded with proceeds of the Series 2005 B Bonds and other available funds of the Issuer are

reasonably required and provide a source of security that facilitates the marketing of the Series 2005 B Bonds at the interest rates provided thereon which rates are comparable to those of a bond issuer of a similar character. In determining that the aforesaid funds are "reasonably required" we have considered comparable issues sold within the last six months and current market conditions for the Series 2005 B Bonds.

5. To the best knowledge and belief of the undersigned, there are no other facts, estimates or circumstances that would materially change the expectations set forth herein, and in the Tax and Non-Arbitrage Certificate of the Issuer, and said expectations are reasonable.

WITNESS my signature on this 1st day of April, 2005.

CREWS & ASSOCIATES, INC.

By: _____

Its: Vice President

THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

REGISTRAR'S CERTIFICATE

United Bank, Inc., Charleston, West Virginia (the "Bank"), as Registrar for the above-captioned Series 2005 B Bonds (the "Series 2005 B Bonds"), hereby certifies as follows, all capitalized terms used herein have the same meanings set forth in the Bond Ordinance of The City of Charleston (the "Issuer") enacted on February 7, 2005, as supplemented by a Supplemental Resolution adopted on February 7, 2005 (collectively, the "Ordinance"):

1. The Bank is a West Virginia banking corporation duly organized, validly existing, and in good standing under the laws of West Virginia, and is lawfully empowered, pursuant to such laws, to accept the duties and obligations contemplated and as provided under the Ordinance and to serve in the capacities of Registrar under the Ordinance.

2. The Bank has duly authorized, by all necessary action, the authentication of the Series 2005 B Bonds and the execution and delivery of this Certificate and the acceptance of all duties of Registrar under the Ordinance, and any and all other documents and agreements as may be required to be executed, delivered and received by the Bank in order to carry out, give effect to, and consummate the transactions contemplated thereby.

3. The person indicated in paragraph 4 below was at the time of the authentication of the Series 2005 B Bonds, and is now, a duly elected, qualified and acting incumbent in his or her office; and, pursuant to authorization from the Board of Directors of the Bank, such person, in his or her official capacity, was and is authorized to authenticate the Series 2005 B Bonds for and on behalf of the Bank.

4. Appearing opposite the name and title of the person indicated below is a true and correct specimen of his or her signature.

| Name | Title | Signature |
|---|---|---|
| Kathy Smith | Vice President | |

5. There have been filed with the Bank all of the documents listed in the Ordinance and the Series 2005 B Bonds have been duly authenticated and delivered to the Original Purchaser, and proceeds of the Series 2005 B Bonds have been deposited as required by the Ordinance.

6. Attached hereto as Exhibit A is a correct listing of the Series 2005 B Bonds numbers, CUSIP numbers, maturity dates, principal amounts and interest rates of the Series 2005 B Bonds.

WITNESS my signature on this 1st day of April , 2005.

UNITED BANK, INC.

By: _____
Its:

# EXHIBIT A

## SERIES 2005 B BONDS TERMS

| Bond No. | CUSIP | Maturity Date | Principal Amount | Interest Rate | Yield |
|---|---|---|---|---|---|
| BR-1 | 160591FJ7 | June 1, 2005 | $105,000 | 3.000% | 3.000% |
| BR-2 | 160591FK4 | June 1, 2006 | 300,000 | 3.500 | 3.500 |
| BR-3 | 160591FL2 | June 1, 2007 | 305,000 | 3.700 | 3.700 |
| BR-4 | 160591FM0 | June 1, 2008 | 320,000 | 3.900 | 3.900 |
| BR-5 | 160591FN8 | June 1, 2009 | 335,000 | 4.000 | 4.000 |
| BR-6 | 160591FP3 | June 1, 2010 | 345,000 | 4.100 | 4.208 |
| BR-7 | 160591FQ1 | June 1, 2011 | 360,000 | 4.200 | 4.292 |
| BR-8 | 160591FR9 | June 1, 2012 | 370,000 | 4.300 | 4.381 |
| BR-9 | 160591FS7 | June 1, 2013 | 215,000 | 4.400 | 4.473 |

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

April 1, 2005

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

Re: The City of Charleston, West Virginia
$2,655,000 Parking System Refunding Revenue Bonds, Series 2005 B

Ladies and Gentlemen:

We have acted as bond counsel to The City of Charleston, West Virginia (the "Issuer"), a municipal corporation, in connection with the issuance of its $2,655,000 Parking System Refunding Revenue Bonds, Series 2005 B, dated the date hereof (the "Bonds"). In such capacity, we have examined such law and such certified proceedings, certifications and other documents as we have deemed necessary to render this opinion.

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 8, Article 12, Chapter 8, Article 16 and Chapter 13, Article 2E of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and under and pursuant to a Parking System Refunding Note and Bond Ordinance duly passed by the Issuer on January 18, 2005, effective February 7, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on February 7, 2005 and a Certificate of Determination executed March 23, 2005 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued. Capitalized terms used and not otherwise defined herein shall have the respective meanings given them in the Ordinance.

In connection with the issuance of the Bonds, the Issuer has executed a Tax and Non-Arbitrage Certificate, dated as of the date hereof (the "Tax Certificate"), which, among other things, sets forth restrictions on the investment and expenditure of the Bonds proceeds and earnings thereon, to ensure that the 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.

Regarding questions of fact material to our opinion, we have relied upon representations of the Issuer contained in the herein-described documents and certifications furnished to us by or on behalf of the Issuer (including certifications as to matters which are material to paragraph 4 below), without undertaking to verify the same by independent investigation.

The Bonds are issued in the form of a series of fully registered Bonds.

Based upon the foregoing, 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 the power to adopt the Ordinance, which has been duly and lawfully enacted and adopted by the Issuer, is in full force and effect and is valid and binding upon the Issuer and enforceable in accordance with its terms, and no other authorization for the Ordinance is required.

2. The Issuer is duly authorized to issue the Bonds, which Bonds have been duly and validly authorized and issued in accordance with the Act and in accordance with the Ordinance, and constitutes a valid, binding revenue obligation of the Issuer as provided in the Ordinance, payable and enforceable in accordance with their terms and the terms of the Ordinance and are entitled to the benefits of the Ordinance and of the Act.

3. The Bonds are secured by the Net Revenues of the Parking System and from funds on deposit in the Series 2005 B Bonds Sinking Fund and the Series 2005 B Bonds Reserve Account, and are on parity with the Issuer's Parking System Refunding Revenue Bonds, Series 2005 A, all as more fully described in the Ordinance. In addition, the Act imposes a statutory mortgage lien on the Parking System.

4. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, interest on the Bonds is not includable in the gross income of the owners thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations. It should be noted, however, that interest on the Bonds held by a corporation may be subject indirectly to alternative minimum tax because of its inclusion in the adjusted current earnings of such corporate holder. The opinions set forth in the preceding sentences are subject to the condition that the Issuer comply, on a continuing basis, with all representations, covenants and certifications set forth in the Ordinance and the Tax

Certificate and other documents relating thereto. Failure to comply with certain of such representations, covenants and certifications could cause the interest on the Bonds to be includable in a holder's gross income retroactive to the date of issuance of the Bonds. Except as described herein, we express no opinion regarding other federal tax consequences arising with respect to the Bonds.

5. Under the Act, as presently written and applied, the Bonds and any interest thereon is exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

It is to be understood that the rights of the owners of the Bonds and the enforceability of the Bonds, the Ordinance and the pledges set forth therein are limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, by equitable principles, whether considered at law or in equity, and by the exercise of judicial discretion. Further, we express no opinion regarding tax consequences arising with respect to the Bonds other than as expressly set forth herein.

We have not been engaged, or undertaken, to review the accuracy, completeness or sufficiency of the Official Statement or other offering material related to the Bonds (except to the extent, if any, stated in the Official Statement) and we express no opinion relating thereto.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

We have examined the executed and authenticated Bond numbered BR-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

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

April 1, 2005

The City of Charleston
Charleston, West Virginia

Crews & Associates, Inc.
Charleston, West Virginia

Ferris, Baker Watts, Incorporated
Charleston, West Virginia

Re: The City of Charleston, West Virginia
$2,655,000 Parking System Refunding Revenue Bonds, Series 2005 B

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance of the above-referenced Series 2005 B Bonds (the "Series 2005 B Bonds") of The City of Charleston (the "Issuer"), issued pursuant to the Constitution and laws of the State, including particularly Chapter 8, Article 12, Chapter 8, Article 16 and Chapter 13, Article 2E of the Code of West Virginia, 1931, as amended (collectively, the "Act") and pursuant to an Ordinance enacted by the City Council on February 7, 2005, as supplemented by a supplemental resolution of the Issuer adopted February 7, 2005 and a Certificate of Determination executed March 23, 2005 (collectively, the "Ordinance"). We are herewith rendering our final approving opinion of even date in connection with the authorization, issuance and delivery of the Series 2005 B Bonds to Crews & Associates, Inc. and Ferris, Baker Watts, Incorporated, as the Underwriters named in the Bond Purchase Agreement dated February 7, 2005 (the "Bond Purchase Agreement"), relating to the Series 2005 B Bonds.

In rendering this opinion, we reviewed records of the acts taken by the Issuer in connection with the authorization, sale and issuance of the Series 2005 B Bonds, including a record of proceedings of the Issuer relating to the authorization, execution and delivery of the Bond Purchase Agreement, and we were present at various meetings for the preparation of various parts of the Official Statement relating to the Series 2005 B Bonds, dated and executed by the Mayor of the Issuer on February 7, 2005 (the "Official Statement").

1. The Bond Purchase Agreement has been duly authorized, executed and delivered by, and (assuming due authorization, execution and delivery by the Underwriters and that it is a binding agreement of the Underwriters in accordance with its terms) constitutes a binding agreement of the Issuer in accordance with its terms;

2. The Series 2005 B Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Ordinance is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended;

3. The statements contained in the Official Statement under the caption "Tax Exemption" are true and accurate in all material respects and present a fair and accurate summary and description of the matters summarized and described under such caption; and

4. The statements contained in the Official Statement under the captions "Additional Security for the Series 2005 B Bonds," "The Bonds" (except for any statements made under the sub-captions "Book-Entry Only System" and "DTC" with respect to The Depository Trust Company), "Financing Plan" and "Summary of Certain Provisions of the Bond Ordinance," insofar as such statements contained under such captions purport to summarize certain matters set forth therein and certain provisions of the Ordinance, are complete and accurate and present a fair summary of the matters referred to therein and of the Ordinance.

Very truly yours,

Jackson Kelly PLLC

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW
Clarksburg Charleston Morgantown Martinsburg Wheeling Huntington

Bank One Center, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information

April 1, 2005

The City of Charleston
Charleston, West Virginia

Crews & Associates, Inc.
Charleston, West Virginia

Ferris, Baker Watts, Incorporated
Charleston, West Virginia

Jackson Kelly PLLC
Charleston, West Virginia

Re: The City of Charleston, West Virginia
$2,655,000 Parking System Refunding Revenue Bonds, Series 2005 B

Ladies and Gentlemen:

We have served as Special Counsel to The City of Charleston, West Virginia (the "Issuer") for the above-captioned bonds of the Issuer (the "Series 2005 B Bonds"). As such counsel, we have examined copies of the approving opinion of Jackson Kelly PLLC, as bond counsel, relating to the Series 2005 B Bonds, a Bond Purchase Agreement, dated February 7, 2005, including all schedules and exhibits attached thereto (the "Bond Purchase Agreement"), by and between the Issuer and the Underwriters named therein, a Bond Ordinance duly passed by the Issuer on January 18, 2005, effective February 7, 2005, as supplemented by a Supplemental Resolution duly adopted by the Issuer on February 7, 2005 (collectively, the "Ordinance"), and other documents relating to the Series 2005 B Bonds and the Issuer, including the Continuing Disclosure Certificate, the Preliminary Official Statement dated February 2, 2005, the Official Statement dated February 7, 2005, and the Tax and Non-Arbitrage Certificate (collectively with the Bond Purchase Agreement and Ordinance, the "Bond Documents"). All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Purchase Agreement and the Ordinance when used herein.

We are 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 operate and maintain the Parking System and to enact the Ordinance, all under the Act and other applicable provisions of law.

2. The Bond Purchase Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.



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3. The members and officers of the Council 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. The Issuer has full power and authority to consummate all transactions contemplated by the Series 2005 B Bonds and the Bond Documents.

5. To the best of our knowledge, after due inquiry, the execution and delivery of the Series 2005 B Bonds and the Bond Purchase Agreement and the consummation of the transactions contemplated by the Series 2005 B Bonds, the Bond Purchase Agreement, the Ordinance and the Bond Documents, 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, order, resolution, agreement or other document 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 our knowledge, after due inquiry, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bond Purchase Agreement, the Series 2005 B Bonds and the Ordinance, the operation of the Parking System or the validity of the Series 2005 B Bonds.

7. Based upon our experience as special counsel for the Issuer and on our review of and participation in the drafting of the Official Statement, and after diligent inquiry, we have no reason to believe that the information regarding the Issuer in the Official Statement contains any untrue statement of a material fact or omits any material facts necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

8. We hereby consent to the references made to us in the Official Statement.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

STEPTOE & JOHNSON PLLC

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CH744448.1

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April 1, 2005

Crews & Associates, Inc.
Charleston, West Virginia

Ferris, Baker Watts, Incorporated
Charleston, West Virginia

Re: The City of Charleston, West Virginia
$2,655,000 Parking System Refunding Revenue Bonds, Series 2005 B

Ladies and Gentlemen:

We have acted as your counsel in connection with your purchase of the above-referenced bonds (the "Series 2005 B Bonds") pursuant to a Bond Purchase Agreement dated February 7, 2005 (the "Agreement"), between The City of Charleston (the "Issuer") and you. Capitalized terms used and not otherwise defined herein have the respective meanings assigned to them in the Agreement.

We are of the opinion that the Series 2005 B Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Ordinance is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended; and (ii) based upon our participation in the preparation of the Official Statement as counsel for the Underwriter and without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Official Statement, we have no reason to believe that as of the date of the Closing the Official Statement, as of its date, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except for the statements in the Official Statement with respect to The Depository Trust Company and the Series 2005 B Bonds being available in book-entry form only and except for information concerning the Issuer and the financial statements and other financial and statistical data included therein, as to which we express no view) or that the Official Statement, as amended or supplemented to the date of Closing (except as aforesaid) contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

Respectfully submitted,

Goodwin & Goodwin, LLP

GOODWIN & GOODWIN, LLP

NOTICE OF MANDATORY TENDER

THE CITY OF CHARLESTON, WEST VIRGINIA

PARKING SYSTEM BOND ANTICIPATION NOTES, SERIES 2005

Dated: February 1, 2005

CUSIP NUMBERS: 160591EZ2, 160591FA6, 160591FB4, 160591FC2, 160591FD0, 160591FE8, 160591FF5, 160591FG3, 160591FH1

TO THE OWNERS OF ALL THE ABOVE-CAPTIONED NOTES:

NOTICE IS HEREBY GIVEN that all The City of Charleston, West Virginia, Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes"), have been ordered by The City of Charleston (the "Issuer") to be tendered on April 1, 2005 (the "Tender Date"), in accordance with the provisions of the Ordinance authorizing issuance of the Series 2005 Notes.

All Series 2005 Notes outstanding on the Tender Date are to be surrendered to:

West Virginia Municipal Bond Commission
8 Capitol Street, Suite 500
Charleston, WV 25301

in exchange for the Issuer's Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds"), dated April 1, 2005, in an amount equal to the then outstanding principal amount of, and of corresponding maturities to, the Series 2005 Notes, plus accrued interest thereon to and including March 31, 2005. Upon the surrender of the Series 2005 Notes to the West Virginia Municipal Bond Commission, the West Virginia Municipal Bond Commission will deliver to you the Series 2005 B Bonds in exchange for said Series 2005 Notes.

Such tender is subject to the issuance and delivery of the Series 2005 B Bonds on April 1, 2005 and shall be of no effect unless the Series 2005 B Bonds are so issued and delivered. If the Series 2005 B Bonds are not issued and delivered on such date, the Registrar of the Series 2005 Notes shall promptly notify the owners of the Series 2005 Notes of such fact.

No representation is made as to the accuracy or correctness of the CUSIP numbers printed on the Series 2005 Notes or as contained in this notice or the mailing of this notice (including any failure to mail such notice).

THE CITY OF CHARLESTON, WEST VIRGINIA

/s/ Danny Jones
Mayor

Dated: March 24, 2005

THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

LETTER OF INSTRUCTIONS
TO REGISTRAR OF SERIES 2005 NOTES

United Bank, Inc.
500 Virginia Street, East
Charleston, West Virginia 25301

Re: The City of Charleston, West Virginia Parking System Bond Anticipation Notes, Series 2005

Ladies and Gentlemen:

The City of Charleston (the "Issuer") intends to exchange its Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds") for its outstanding Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes") on the Mandatory Tender Date, being April 1, 2005, pursuant to a Bond Ordinance enacted by the Council of the Issuer on February 7, 2005, as supplemented by a Supplemental Resolution adopted on February 7, 2005 and a Certificate of Determination executed March 23, 2005 (collectively, the "Ordinance").

United Bank, Inc. serves as Registrar of the Series 2005 Notes. In connection with the mandatory tender of the Series 2005 Notes in exchange for the Series 2005 B Bonds, you are hereby requested to:

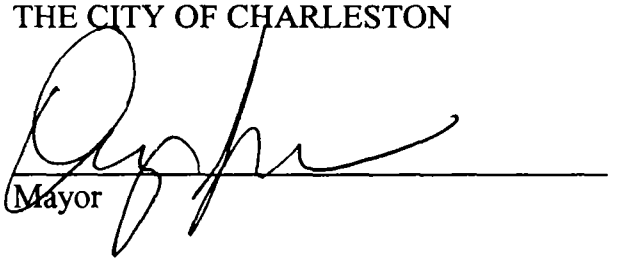
1. Provide the Notice of Mandatory Tender, substantially in the form attached hereto, by first-class mail, postage prepaid, to the registered owners and the rating agencies of the Series 2005 Notes, in accordance with the redemption and mandatory tender notice provisions of the Ordinance. The Notice of Redemption must be mailed by March 24, 2005.

2. Provide the Notice of Mandatory Tender, substantially in the form attached hereto, to all nationally recognized municipal securities information repositories.

Please provide a copy of the notice requested above to the Issuer and to the Issuer's Bond Counsel, Jackson Kelly PLLC. The Issuer will pay your fees and extraordinary costs involved in providing these notices upon the submission of an invoice for services.

Dated this 23rd day of March, 2005.

THE CITY OF CHARLESTON



Mayor

JACKSONKELLY
ATTORNEYS AT LAW PLLC

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March 30, 2005

**VIA FAX AND REGULAR MAIL**

Ms. Sara Boardman
Executive Director
West Virginia Municipal
Bond Commission
8 Capitol Street, Suite 500
Charleston, WV 25301

Re: The City of Charleston, West Virginia
Parking System Refunding Revenue Bonds, Series 2005 B

Dear Sara:

Jackson Kelly PLLC serves as bond counsel for The City of Charleston (the "Issuer"). We wish to advise you that on April 1, 2005 (the "Delivery Date"), the Issuer will deliver the above-captioned bonds (the "Series 2005 B Bonds") to The Depository Trust Company ("DTC") for the benefit of Crews and Associates, Inc. and Ferris, Baker Watts, Incorporated (collectively, the "Purchaser"), in exchange for the Issuer's Parking System Bond Anticipation Notes, Series 2005 (the "Series 2005 Notes").

On March 31, 2005, United Bank, Inc., as Registrar of the Series 2005 Notes, will wire to the West Virginia Municipal Bond Commission (the "Commission") $5,151.49, being all remaining funds in the Series 2005 Notes Costs of Issuance Fund. The Commission shall deposit such funds into the Note Repayment Account established and existing for the Series 2005 Notes. On the Closing Date, funds on deposit in the Note Repayment Account established and existing for the Series 2005 Notes, in the amount of $13,275.00, shall be used to pay all outstanding interest that has accrued on the Series 2005 Notes from February 1, 2005 to and including March 31, 2005. All funds remaining in the Note Repayment Account after payment of said interest, shall be transferred to the Series 2005 B Sinking Fund and be used to pay principal and interest on the Series 2005 B Bonds on June 1, 2005. Following said payments and transfers, the Series 2005 Notes accounts should be closed.

Additionally, all funds on deposit in the Series 2005 Notes Note Reserve Account ($265,500.00), shall be transferred to the Series 2005 B Bonds Reserve Account. Any

earnings accrued but not posted in either the Note Repayment Account or the Note Reserve Account as of April 1, 2005, shall be returned to The City of Charleston.

Please call me if you have any questions.

Very truly yours,

Samme L. Gee

SLG/lp

Copy of letter via email to:
David Molgaard
Marie Prezioso
Joseph Nassif
Greg Isaacs
Bill Bragg, Esquire
John Stump, Esquire

THE CITY OF CHARLESTON, WEST VIRGINIA
PARKING SYSTEM REFUNDING REVENUE BONDS,
SERIES 2005 B

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 1st day of April, 2005, 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 Parking System Refunding Revenue Bonds, Series 2005 B (the "Series 2005 B Bonds"), in the total aggregate principal amount of $2,655,000, pursuant to a Bond Ordinance enacted by the Issuer on February 7, 2005, and a Supplemental Resolution duly adopted February 7, 2005 (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 Series 2005 B Bonds;

WHEREAS, the Issuer has requested that the Costs of Issuance Fund be held and administered by the Registrar; 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 Series 2005 B Bonds, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver Series 2005 B Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exclusion of interest on the Series 2005 B 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.
500 Virginia Street, East
Charleston, WV 25301
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 Series 2005 B 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

# EXHIBIT A

See Bond Ordinance (Tab No. 2)
See Supplemental Resolution (Tab No. 3)