THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

Closing Date: December 13, 2011

TRANSCRIPT OF PROCEEDINGS

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{C2061474.1}

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The pre-closing of the sale of The City of Charleston Sewerage System Revenue Bonds, Series 2011 A, will take place at the office of the West Virginia Water Development Authority in Charleston, West Virginia, at 1:30 p.m., prevailing time, on December 12, 2011. No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless or until all transactions are complete and all documents delivered.

State of West Virginia

WATER DEVELOPMENT AUTHORITY

180 Association Drive, Charleston, WV 25311-1217
(304) 558-3612 - (304) 558-0299 (Fax)
Internet: www.wvwda.org - Email: contact@wvwda.org

Date 12/12/2011 Time 1:30 PM LGA City of Charleston Program CWSRF

NAME	COMPANY, AGENCY, OR ORGANIZATION	TELEPHONE	FAX	E-MAIL
Sheena Chadwell	WVWDA	304-414-6500	304-414-0805	schadwell@wvwda.org
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Rose Brodersen	WV DEP	304 926 0499x1608	304 926 0496	rosalie.m.brodersen @wv.gov

The Authority requests that the following information concerning the individual who will be responsible for sending Debt Service Payments to the Municipal Bond Commission be provided. (If that individual is in attendance, he/she should also sign above.) Please Print:

Name Larry Roller Telephone (304) 348-8134 E-Mail lroller@csbwv.com

Address 208 26th Street Charleston WV 25312

REMINDER: As a participant in this program, the Local Governmental Agency (LGA) agrees and is required to submit annually to the WDA a copy of its audited financial statements and a copy of its adopted budget. Also, pursuant to the Loan Agreement and the NonArbitrage Certificate (both of which are contained in the bond transcript) you are to provide annually to the WDA a rebate calculation certificate or an exception opinion showing whether a rebate amount is due to the US Government under arbitrage requirements in Section 148(f) of the US Internal Revenue Code, 1986, as amended.

State of West Virginia

Certificate

I, Natalie E. Tennant, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13 OF THE WEST VIRGINIA CODE, AND CHAPTER 16, ARTICLE 31 OF THE 2011 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

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

December 8, 2011

Natalie E. Tennant

Secretary of State

ARTICLE 13

SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS

Section

16–13–1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.
16–13–2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.
16–13–3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.
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§ 16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds

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

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

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

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

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

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

(e) No municipal corporation or sanitary district may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system, which includes highways, road and drainage easements, and/or stormwater facilities constructed,

owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

Acts 1933, Ex. Sess., c. 25, § 1; Acts 1955, c. 132; Acts 1986, c. 118; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ⟹270, 708, 711, 950. Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1535, 1708 to 1709.

Notes of Decisions

Construction and application 1
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1. Construction and application

Statutes dealing with municipally owned and operated sewer systems should be read and construed together. Code, 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq., 24-2-1 et seq., 24-3-1 et seq. Delardas v. Morgantown Water Commission, 1964, 137 S.E.2d 426, 148 W.Va. 776. Statutes ⟹ 223.2(21)

Statutes relating to supervision and regulation of public utilities by Public Service Commission and statute dealing with municipally owned sewer systems relate to the same subject and should be read and construed together. Code, 16-13-1 et seq., 24-1-1 et seq. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Statutes ⟹ 223.2(27)

2. Regulation of public utilities

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⟹ 369

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to supervise and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16-13-1 et seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23, 24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⟹ 113

Public Service Commission has statutory power and authority to control facilities, charges and services of all public utilities, and to hear complaints of persons entitled to services which such utilities afford, subject only to limitation that the requirements shall not be contrary to law and that they be just and fair, just and reasonable, and just and proper. Code, 16-13-1 et seq., 24-1-1 et seq. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⟹ 114; Public Utilities ⟹ 119.1

3. Police power

Statute delegating to municipal corporation power by ordinance to create sanitary boards and authorizing such sanitary boards to enter into contracts for construction of sewerage systems is a valid exercise of police power of state. Code, 16-13-1 et seq. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Constitutional Law ⟹ 2437; Health ⟹ 358

Legislature may delegate police power to cities or counties, as it sees fit. Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Constitutional Law ⟹ 2437; Constitutional Law ⟹ 2438

4. Revenue bonds for construction

Plan of preparation expense in construction of municipal sewage treatment and disposal system constituted one of first items of expense incurred and constituted a liability, according to agreements between municipality and Federal Works Agency which advanced money to meet such expense, from moment construction be-

gan, and, therefore, repayment of such advancements from proceeds of future revenue bond issues could not be held unlawful on ground that such payment would impair bondholders' security. Code W.Va. 16-13-16, 16-13-18, 16-13-22, 16-13-32; War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⟹ 950(15).

In action to cancel certain sewer revenue bonds issued by West Virginia City and to enjoin collection of sewerage service charges assessed for the purpose of liquidating such bonds, District Court was bound by decisions of Supreme Court of Appeals of West Virginia upholding the constitutionality of statute permitting municipalities to issue bonds for self-liquidating municipal projects. Laws W.Va.1933, 1st Ex.Sess., c. 25, as amended by Laws W.Va. 1933, 2nd Ex.Sess., c. 48. Stevenson v. City of Bluefield, 1941, 39 F.Supp. 462. Federal Courts ⟹ 433

City located on or near state boundary and confronted with necessity of purchasing property and erecting sewage disposal plant in adjoining state held authorized under statute to issue revenue bonds payable solely from revenues of such plant. Acts 1933, 1st Ex.Sess., c. 25, as amended by Acts 1933, 2d Ex.Sess., c. 48. Bernard v. City of Bluefield, 1936, 186 S.E. 298, 117 W.Va. 556. Municipal Corporations ⟹ 919.

5. Public improvements

Under contract between municipal sanitary board and contractor requiring contractor to bear cost and expense of damage to surface, overhead or subsurface structures in construction of sanitary sewer system, contractor was liable to water company for expense of removal of all water and other pipes under streets which interfered with construction of sewer system. Code, 16-13-1 et seq., 16-13-17, 16-13-24. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⟹ 400

6. Power to incur indebtedness and expenditures

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⟹ 864(3)

7. Jurisdiction

Taxpayers of a city seeking to enjoin collection by city of sewerage service charges assessed for purpose of liquidating bonds issued for construction of sewerage system could not invoke jurisdiction of federal court on ground that by reason of prior decisions of state court upholding validity of statute, under which bonds were issued and rates assessed, plaintiffs did not have a plain, speedy and efficient remedy in state court within meaning of Judicial Code. Laws W.Va.1933, 1st Ex.Sess., c. 25, as amended by Laws W.Va.1933, 2nd Ex.Sess., c. 48; Jud.Code, § 24(1), 28 U.S.C.A. § 1312. Stevenson v. City of Bluefield, 1941, 39 F.Supp. 462. Federal Courts ⟹ 7; Federal Courts ⟹ 26.1

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

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

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

(1) "Board" means the sanitary board as set up in section eighteen of this article.

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

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

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

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

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

(7) "Works" means sewage works and stormwater works either separately or collectively.

Acts 1933, Ex. Sess., c. 25, § 2; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Health ⟹369.
Municipal Corporations ⟹711.
Westlaw Topic Nos. 198H, 268.

C.J.S. Health and Environment §§ 7 to 9, 16 to 17, 26 to 27, 44 to 45, 98 to 100.
C.J.S. Municipal Corporations § 1535.

Notes of Decisions

Construction and application 1
Construction of sewer systems 3
Public utilities 2

1. Construction and application

Statutes dealing with municipally owned and operated sewer systems should be read and construed together. Code, 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq., 24-2-1 et seq., 24-3-1 et seq. Delardas v. Morgantown Water Commission, 1964, 137 S.E.2d 426, 148 W.Va. 776. Statutes ⟹ 223.2(21)

2. Public utilities

All contracts made by a utility relating to the public service must be deemed to be entered into in contemplation of the exercise by the state of its regulatory power whenever the public interest may make it necessary. Berkeley County Public Service Sewer Dist. v. West Vir-

ginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Public Utilities ⚷ 115

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to supervise and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16-13-1 et seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23, 24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⚷ 113

3. Construction of sewer systems

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⚷ 864(3)

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⚷ 950(15)

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

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

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

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

After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may consider expedient, if funds therefor be

available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and of other sewers, stormwater conduits, and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof, including, but not limited to, those activities necessary to comply with all federal and state requirements, including stormwater and surface runoff water quality improvement activities.

The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for the expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article.

Acts 1933, Ex. Sess., c. 25, § 3; Acts 1989, c. 133; Acts 2001, c. 143, eff. 90 days after April 11, 2001; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Historical and Statutory Notes

Acts 2001, c. 143, also amended this section to read:

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

Library References

Health ⚷369.
Westlaw Topic No. 198H.

C.J.S. Health and Environment §§ 7 to 9, 16 to 17, 26 to 27, 44 to 45, 98 to 100.

Notes of Decisions

Independent contractor 3
Police power of local authorities 1
Validity of municipal contracts 2

1. Police power of local authorities

Under the police power of the State, the Legislature has the power to provide for the protection of the safety, health, morals and general welfare of the public, and may delegate such powers to municipalities created by it. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Constitutional Law ⟹ 2437; Constitutional Law ⟹ 1066

Under statute delegating to municipal corporations power by ordinance to create sanitary boards and authorizing such boards to enter into contracts for construction of sewerage systems, ordinance creating sanitary board and authorizing such board to enter into contract for construction of sewerage system was valid exercise of police power of state delegated to city by statute. Code, 16-13-1 et seq. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Health ⟹ 358; Health ⟹ 369

2. Validity of municipal contracts

Contract between municipal sanitary board and contractor providing for construction of sanitary sewerage system in furtherance of exercise of police power of state and provisions of city ordinance was valid. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⟹ 339(1)

3. Independent contractor

Where city had no right of control over contractor and sanitary board in construction of sanitary sewer system, contractor was "independent contractor". West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⟹ 400

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

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

Acts 1933, Ex. Sess., c. 25, § 4.

Library References

Municipal Corporations ⚷288.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 969.

Notes of Decisions

Construction planning expenses 2
Power to incur indebtedness and expenditures 1

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1. Power to incur indebtedness and expenditures

West Virginia municipalities are authorized to incur obligations for purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from proceeds of revenue bonds, not from tax levies. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⚷ 864(3)

2. Construction planning expenses

Plan of preparation expense in construction of municipal sewage treatment and disposal system constituted one of first items of expense incurred and constituted a liability, according to agreements between municipality and Federal Works Agency which advanced money to meet such expense, from moment construction began, and, therefore, repayment of such advancements from proceeds of future revenue bond issues could not be held unlawful on ground that such payment would impair bondholders' security. Code W.Va. 16-13-16, 16-13-18, 16-13-22, 16-13-32; War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⚷ 950(15)

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⚷ 369

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⚷ 1037

In agreement between West Virginia city and Federal Works Administrator for advances to be used for purpose of plan preparation for construction of proposed sewage treatment and disposal system, parties would be presumed to know extent of city's authority to make a binding contract in such respect, and, therefore, limitation imposed by West Virginia law on city would be read into the agreement. War Mobilization and Reconversion Act of 1944, §§ 101 et seq., 501, 58 Stat. 785, 791; Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. W.Va. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⚷ 250

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

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

cost of the works; and (e) contain such other provisions as may be necessary in the premises.

Acts 1933, Ex. Sess., c. 25, § 5.

Library References

Municipal Corporations ⟹293.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations §§ 977 to 978.

Notes of Decisions

Power to incur indebtedness and expenditures 1

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1. Power to incur indebtedness and expenditures

West Virginia municipalities are authorized to incur obligations for purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from proceeds of revenue bonds, not from tax levies. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⟹ 864(3)

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⟹ 1037

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⟹ 950(15)

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

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

Acts 1933, Ex. Sess., c. 25, § 6; Acts 1967, c. 105; Acts 1981, 1st Ex. Sess., c. 2.

Library References

Municipal Corporations ⚷294 to 300.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 979 to 985, 988 to 1001.

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

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

Acts 1933, Ex. Sess., c. 25, § 7.

Library References

Municipal Corporations ⚷287.
Westlaw Topic No. 268.

§ 16-13-8. Cost of works

The cost of the works shall be deemed to include the cost of acquisition or construction thereof, the cost of all property, rights, easements, and franchises deemed necessary or convenient therefor and for the improvements determined

upon as provided in this article; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvement last mentioned; engineering and legal expenses; expense for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized and the construction or acquisition of the works and the placing of the works in operation and the performance of the things herein required or permitted in connection with any thereof.

Acts 1933, Ex. Sess., c. 25, § 8.

Library References

Municipal Corporations ⚷288.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 969.

Notes of Decisions

Monetary advances 2
Preliminary expenditures 1

1. Preliminary expenditures

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⚷ 369

2. Monetary advances

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⚷ 1037

Plan of preparation expense in construction of municipal sewage treatment and disposal system constituted one of first items of expense incurred and constituted a liability, according to agreements between municipality and Federal Works Agency which advanced money to meet such expense, from moment construction began, and, therefore, repayment of such advancements from proceeds of future revenue bond issues could not be held unlawful on ground that such payment would impair bondholders' security. Code W.Va. 16-13-16, 16-13-18, 16-13-22, 16-13-32; War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⚷ 950(15)

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

Nothing in this article contained shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under this article. Funds for the payment of the entire cost of any of the works referred to in this article, exclusive of any portions of the cost that may be defrayed out of any grant or contribution, shall be provided by the issuance of revenue bonds of the municipality, the principal and interest of which shall be

payable solely from the fund herein provided for the payment, and the bonds may not, in any respect, be a corporate indebtedness of the municipality, within the meaning of any statutory or constitutional limitations thereon. All the details of the bonds shall be determined by ordinance or ordinances of the municipality.

Acts 1933, Ex. Sess., c. 25, § 9; Acts 1949, c. 93; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ⟹870, 911, 950(15).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1573 to 1579, 1581, 1647 to 1649, 1708 to 1709.

Notes of Decisions

Power of municipal corporations to contract 2
Power to incur indebtedness and expenditures 3
Preliminary expenditures 4
Preliminary proceedings and ordinances 5
Validity 1

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1. Validity

Statute authorizing municipalities to construct and finance self-liquidating sewer systems held constitutional (Acts 1933 [1st Ex.Sess.] c. 25). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ⟹ 266

2. Power of municipal corporations to contract

Under provisions of statute relating to contract with other municipalities for service of sewage works, city which ordered construction of sewage disposal plant was authorized to contract with town to provide that town would have the right to use part of the capacity of the plant in return for contributing to its cost and town was authorized to enter into such contracts with city for the use of the plant, and fact that town was unable to sell revenue bonds because it was not allowed to have part ownership in the plant or in the interceptor sewers did not mean that town was not liable for payments agreed to under the contracts, where city offered to buy the revenue bonds issued by the town. Code, 16-13-9, 16-13-19, 16-13-23a. City of Morgantown v. Town of Star City, 1973, 195 S.E.2d 166, 156 W.Va. 529. Municipal Corporations ⟹ 277

3. Power to incur indebtedness and expenditures

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⟹ 864(3)

West Virginia municipalities are authorized to incur obligations for purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from proceeds of revenue bonds, not from tax levies. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⟹ 864(3)

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⟹ 950(15)

Where statute authorizing municipalities to issue bonds for self-liquidating municipal project, provided that bonds should not be corporate indebtedness, bonds held not to create "debts" within constitutional inhibition (Acts 1933 [1st Ex.Sess.] c. 25, §§ 9, 10, 16, 21). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ⟹ 907

Provisions of statute relating to issuance of municipal bonds constitute integral parts of bonds regardless of whether included therein (Acts 1933 [1st Ex.Sess.] c. 25, §§ 9, 10, 16, 21). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ⟹ 923

Statute permitting municipalities to issue bonds for self-liquidating municipal projects held legitimate delegation of legislative power.

Acts 1933, 1st Ex.Sess., c. 25. Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Constitutional Law ⟹ 2437; Municipal Corporations ⟹ 907

4. Preliminary expenditures

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⟹ 369

5. Preliminary proceedings and ordinances

Provision of sewer ordinance declaring that statutory mortgage lien should exist in favor of bondholders violated statute permitting municipalities to construct self-liquidating sewer systems, but declaration could be regarded as surplusage and did not affect validity of remainder of ordinance (Acts 1933 [1st Ex.Sess.] c. 25). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ⟹ 303(4)

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

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

or otherwise, shall be less than the cost of the works, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in said ordinance authorizing the issuance of the bonds first issued or in the trust indenture hereinafter authorized, shall be deemed to be of the same issue and shall be entitled to payment without preference or priority of the bonds first issued. Prior to the preparation of the definitive bonds temporary bonds may under like restrictions be issued with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

Acts 1933, Ex. Sess., c. 25, § 10; Acts 1970, c. 11; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2.

Library References

Municipal Corporations ⚷922, 950(15).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1684 to 1686, 1697, 1708 to 1709.

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

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

Acts 1933, Ex. Sess., c. 25, § 11.

Library References

Municipal Corporations ⚷911, 950(15).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to 1649, 1708 to 1709.

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

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

Acts 1933, Ex. Sess., c. 25, § 12.

Library References

Municipal Corporations ⟹911, 950(15).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to 1649, 1708 to 1709.

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

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

Acts 1933, Ex. Sess., c. 25, § 13.

Library References

Municipal Corporations ⟹911, 950(15).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to 1649, 1708 to 1709.

Notes of Decisions

Preliminary expenditures 1
Repayment of loans 2

1. Preliminary expenditures

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⟹ 369

2. Repayment of loans

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⟹ 950(15)

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⟹ 1037

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

In the discretion of the governing body such bonds may be secured by a trust indenture by and between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State of West Virginia but no such trust indenture shall convey or mortgage the works or any part thereof. The ordinance authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality and the board in relation to the construction or acquisition of the works and the improvement,

operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the works shall be contracted for, constructed and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, successors, assigns or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, successors, assigns or nominees. Such indenture may set forth the rights and remedies of the bondholders and/or such trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. Except as in this article otherwise provided, the governing body may provide by ordinance or in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depository as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine.

Acts 1933, Ex. Sess., c. 25, § 14.

Library References

Municipal Corporations ⟹911, 950(15).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to 1649, 1708 to 1709.

United States Code Annotated

Trust Indenture Act of 1939, see 15 U.S.C.A. § 77aaa et seq.

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

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

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

Acts 1933, Ex. Sess., c. 25, § 15; Acts 1933, 2nd Ex. Sess., c. 48; Acts 1986, c. 118.

Library References

Municipal Corporations ⟹951.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1704 to 1705.

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

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

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

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

(c) The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements and/or storm-

water facilities constructed, owned and/or operated by the West Virginia division of highways.

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

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

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

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

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

(i) After such hearing, which may be adjourned from time to time, the ordinance establishing rates, fees or charges, either as originally introduced or

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

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

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

(*l*) Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of twenty days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all rates, fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

(m) The board collecting such rates, fees or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities or both, and shall not restore either water facilities or sewer facilities, to any delinquent user of either until all delinquent rates, fees or charges for both water facilities, and sewer facilities, including reasonable interest and penalty charges, have been paid in full.

Acts 1933, Ex. Sess., c. 25, § 16; Acts 1933, 2nd Ex. Sess., c. 48; Acts 1959, c. 125; Acts 1967, c. 105; Acts 2001, c. 212, eff. 90 days after April 14, 2001; Acts 2004, c. 185, eff. 90 days after March 12, 2004.

Library References

Municipal Corporations ⚷712.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 1535.

Notes of Decisions

Construction and application 1
Public utilities 3
Rates and charges for service 2
Summary judgment 5
Water service termination 4

1. Construction and application

Statutes dealing with municipally owned and operated sewer systems should be read and construed together. Code, 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq., 24-2-1 et seq., 24-3-1 et seq. Delardas v. Morgantown Water Commission, 1964, 137 S.E.2d 426, 148 W.Va. 776. Statutes ⟹ 223.2(21)

2. Rates and charges for service

If rates and charges set forth in ordinance and established by public service commission by its order should be considered improper for any valid reason, they may be challenged by any user of sewer services by complaint in proper proceeding before public service commission. Code, 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq. Delardas v. Morgantown Water Commission, 1964, 137 S.E.2d 426, 148 W.Va. 776. Municipal Corporations ⟹ 712(8)

Where charges for use of sewer by sanitary board of city of Beckley were assessed to property owners according to quantity of water supplied subject to deduction of amount of water retained on premises to be determined by a meter installed by consumers and allowing deduction of costs thereof from amounts due on bills, such charges were not discriminatory, notwithstanding some users were financially unable to install meters. Code 16-13-30. Houchins v. City of Beckley, 1944, 32 S.E.2d 286, 127 W.Va. 306. Municipal Corporations ⟹ 712(7)

Party aggrieved by rates established for use of sewer could not resort to courts for relief, where he failed to exercise statutory remedy of appearing before governing body of municipality at public hearing (Acts 1933 [1st Ex.Sess.] c. 25). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ⟹ 712(8)

3. Public utilities

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to supervise and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16-13-1 et seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23, 24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⟹ 113

4. Water service termination

Any impairment of sewer revenue bonds issued by cities providing for imposition of liens against property for unpaid sewer charges, by statutory amendment precluding cities from attaching lien to landlord's property for tenant's failure to pay sewer charges, was not "substantial impairment" and, thus, amendment did not violate constitutional prohibition against impairment of contracts, where bond contracts acknowledged that parties' rights were subject to legislative regulation, contracts were merely modified, abridged right was not central to parties' undertaking, and prior legislation provided utilities with far more effective remedy of water service termination for unpaid sewer charges. U.S.C.A. Const. Art. 1, § 10, cl. 1; W.Va.Code, §§ 8-18-23, 16-13-16. City of Charleston v. Public Service Com'n of West Virginia, 1995, 57 F.3d 385, certiorari denied 116 S.Ct. 474, 516 U.S. 974, 133 L.Ed.2d 404. Constitutional Law ⟹ 2704; Municipal Corporations ⟹ 712(7)

5. Summary judgment

Allegation, in city's notice of motion for judgment, that claim was for services of city sewage system and penalty for nonpayment to sanitary board for a specified period of time and that defendant was owner of property served and a specified sum was due by reason of a specified ordinance, when read in connection with verified itemized statement accompanying notice, was insufficient to state a claim based upon contract in absence of showing of relationship of sanitary board to sewage system, method of service and right of sanitary board to charge for service, and demurrer to notice was properly sustained. Code 1937, 16-13-15 et seq. City of Beckley v. Craighead, 1943, 24 S.E.2d 908, 125 W.Va. 484. Judgment ⟹ 184

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

The municipality and any county government, state government and federal government served by the services of the works shall be subject to the same

fees, charges and rates established as provided in this article, or to fees, charges and rates established in harmony therewith, for service rendered the municipality, county, state or federal government and shall pay such rates, fees or charges when due from corporate funds and the same shall be considered to be a part of the revenues of the works as herein defined, and be applied as herein provided for the application of the revenues. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

Acts 1933, Ex. Sess., c. 25, § 17; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ⚷712.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 1535.

Notes of Decisions

In general 1

1. In general

Under contract between municipal sanitary board and contractor requiring contractor to bear cost and expense of damage to surface, overhead or subsurface structures in construction of sanitary sewer system, contractor was liable to water company for expense of removal of all water and other pipes under streets which interfered with construction of sewer system. Code, 16-13-1 et seq., 16-13-17, 16-13-24. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⚷ 400

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

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

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

During the construction period, one of the members must be a registered professional engineer. The engineer member of the board need not be a resident of said municipality. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. No officer or employee of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on said sanitary board until at least one year after the expiration of the term of his or her public office. The appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each term and each succeeding term,

an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give such bond, if any, as may be required by ordinance. The mayor or city manager shall act as chairman of the sanitary board, which shall elect a vice chairman from its members and shall designate a secretary and treasurer (but the secretary and the treasurer may be one and the same), who need not be a member or members of the sanitary board. The vice chairman, secretary and treasurer shall hold office as such at the will of the sanitary board.

The members of the sanitary board shall receive compensation for their services, either as a salary or as payments for meetings attended, as the governing body may determine, and shall be entitled to payment for their reasonable expenses incurred in the performance of their duties. The governing body shall fix the reasonable compensation of the secretary and treasurer in its discretion, and shall fix the amounts of bond to be given by the treasurer. All compensation, together with the expenses in this section referred to, shall be paid solely from funds provided under the authority of this article. The sanitary board shall have power to establish bylaws, rules and regulations for its own government.

Acts 1933, Ex. Sess., c. 25, § 18; Acts 1939, c. 96; Acts 1953, c. 146; Acts 1957, c. 137; Acts 1992, c. 95; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Health ⟹369.
Municipal Corporations ⟹711.
Westlaw Topic Nos. 198H, 268.

C.J.S. Health and Environment §§ 7 to 9, 16 to 17, 26 to 27, 44 to 45, 98 to 100.
C.J.S. Municipal Corporations § 1535.

Notes of Decisions

Funds 4
Membership of sanitary boards 2
Powers and duties of sanitary boards 1
Public utilities 3

1. Powers and duties of sanitary boards

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⟹ 369

City which created sanitary board for purpose of erecting sewage disposal plant held authorized to incorporate such sanitary board as a nonstock corporation for purpose of being domesticated in Virginia as a sewage purification company under Virginia law, where no other way was pointed out by which city or sanitary board could under law of Virginia acquire property in that state and carry out contemplated plan of erecting sewage disposal plant. Acts 1933, 1st Ex.Sess., c. 25, as amended by Acts 1933, 2d Ex.Sess., c. 48. Bernard v. City of Bluefield, 1936, 186 S.E. 298, 117 W.Va. 556. Municipal Corporations ⟹ 277

2. Membership of sanitary boards

Where sanitary board created by municipality optional for either mayor or city manager, (but not both) to be appointed to board. 52 W.Va. Op.Atty.Gen. 217 (February 9, 1967) 1967 WL 93382.

3. Public utilities

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to supervise

and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16-13-1 et seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23, 24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⚷ 113

4. Funds

Charleston Sanitary Board treasurer must deliver funds collected from sewer system users to Charleston city treasurer. 52 W.Va. Op.Atty. Gen. 497 (October 6, 1967) 1967 WL 93425.

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

Every sanitary board shall prepare a financial statement and cause the same to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this Code, and the publication area for such publication shall be the sanitary district. Such statement shall contain an itemized account of the receipts and expenditures of the board during the previous fiscal year, showing the source from which all money was derived, and the name of the person to whom an order was issued, together with the amount of such order, and why such order was issued, arranging the same under distinct heads, and including all money received and expended from the sale of bonds, and also a specific statement of the debts of such board, showing the purpose for which any debt was contracted, the amount of money in all funds at the end of the preceding year, and the amount of uncollected service charges. Such statement shall be prepared and published by the board as soon as practicable after the close of the fiscal year: Provided, That such statement for the fiscal year ending June thirtieth, one thousand nine hundred fifty-six, may be published any time during the year one thousand nine hundred fifty-seven. The statement shall be sworn to by the chairman and secretary and treasurer of the board. If a board fails or refuses to perform the duties hereinbefore named, every member of the board concurring in such failure or refusal shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars and the circuit court or criminal court and justices of the peace, of the county where the offense was committed, shall have concurrent jurisdiction to try such offense.

Acts 1957, c. 138; Acts 1967, c. 105.

Acts 1976, c. 33, provided that all references to "justice of the peace" in the code of West Virginia mean "magistrate." See § 50-1-17.

Library References

Health ⚷369.
Municipal Corporations ⚷885.
Westlaw Topic Nos. 198H, 268.
C.J.S. Health and Environment §§ 7 to 9, 16 to 17, 26 to 27, 44 to 45, 98 to 100.
C.J.S. Municipal Corporations § 1628.

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

Any municipality operating a sewage collecting system and/or a sewage disposal plant or plants or stormwater works as defined in this article, or which

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

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

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

Acts 1933, Ex. Sess., c. 25, § 19; Acts 1981, 1st Ex. Sess., c. 2; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ⟹328.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1027 to 1029.

Notes of Decisions

In general 1

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1. In general

Under provisions of statute relating to contract with other municipalities for service of sewage works, city which ordered construction of sewage disposal plant was authorized to contract with town to provide that town would have the right to use part of the capacity of the plant in return for contributing to its cost and town was authorized to enter into such contracts with city for the use of the plant, and fact that town was unable to sell revenue bonds because it was not allowed to have part ownership in the plant or in the interceptor sewers did not mean that town was not liable for payments agreed to under the contracts, where city offered to buy the revenue bonds issued by the town. Code, 16-13-9, 16-13-19, 16-13-23a. City of Morgantown v. Town of Star City, 1973, 195 S.E.2d 166, 156 W.Va. 529. Municipal Corporations ⟹ 277

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

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

Acts 1933, Ex. Sess., c. 25, § 20.

Library References

Municipal Corporations ⟹288(2).
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 969.

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

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

Acts 1933, Ex. Sess., c. 25, § 21.

Library References

Municipal Corporations ⟹937, 955.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations §§ 1707, 1711.

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

The authority herein given shall be in addition to and not in derogation of any power existing in any municipality under any statutory or charter provisions which it may now have or hereafter adopt. For all purposes of this article, all municipal corporations shall have jurisdiction for twenty miles outside the corporate limits thereof: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the

municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

The jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

Acts 1933, Ex. Sess., c. 25, § 22; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ⟹711.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 1535.

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

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

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section.

Acts 1949, c. 93; Acts 1961, c. 107; Acts 1980, c. 59; Acts 1981, 1st Ex. Sess., c. 2; Acts 1986, c. 118.

Library References

Municipal Corporations ⟹864(3).
Westlaw Topic No. 268.
C.J.S. Municipal Corporations §§ 1583 to 1585, 1587.

Notes of Decisions

Power to incur indebtedness and expenditures 1
Repayment of loans and advances 2

1. Power to incur indebtedness and expenditures

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⚷ 864(3)

2. Repayment of loans and advances

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⚷ 1037

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⚷ 950(15)

Under agreement between West Virginia city and Federal Works Administrator, in accordance with the War Mobilization and Reconversion Act of 1944, West Virginia city incurred obligation to repay advances made for purpose of plan preparation for construction of proposed sewage treatment and disposal system if and when construction of the sewage treatment plant should be started and would not be obligated to repay the advances if the construction were not undertaken. War Mobilization and Reconversion Act of 1944, §§ 101 et seq., 501, 58 Stat. 785, 791. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. United States ⚷ 82(1)

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

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

Acts 1949, c. 93.

Library References

Municipal Corporations ⚷328.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1027 to 1029.

§ 16-13-22c. Refunding bonds

Any municipality is authorized to issue refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds, including interest thereon, if any, in arrears or about to become due. The relevant provisions in this article pertaining to revenue bonds shall be equally applicable

in the authorization and issuance of refunding revenue bonds, including their terms and security, the ordinance, the trust indenture, rates, or other aspects of the bonds.

Acts 1949, c. 93.

Library References

Municipal Corporations ⟹913.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to 1648, 1651.

§ 16–13–22d. Subordination of bonds

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

Acts 1949, c. 93.

Library References

Municipal Corporations ⟹950(15).
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1708 to 1709.

§ 16–13–22e. Operating contract

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

Acts 1955, c. 132.

Library References

Municipal Corporations ⟹328.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1027 to 1029.

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

Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with the works, and all the moneys, revenues and other income of such municipality derived from such

works shall be exempt from all taxation by the state of West Virginia or any county, municipality, political subdivision or agency thereof.

Acts 1955, c. 132; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Taxation ⇐2316, 3519.
Westlaw Topic No. 371.

§ 16-13-22g. Covenants with bondholders

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

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

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

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

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

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

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening

of a default in the payment of the principal of or interest thereon, or in the performance of any covenant or agreement with bondholders, and the manner and terms upon which defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

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

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

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

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

Acts 1955, c. 132; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ⚷922.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1684 to 1686, 1697.

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

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

article, any provisions of other statutes of the State to the contrary notwithstanding: Provided, however, That all functions, powers and duties of the state department of health shall remain unaffected by this article.

Acts 1933, Ex. Sess., c. 25, § 23.

Library References

Municipal Corporations ⚷270, 906.
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1645 to 1646, 1702.

Notes of Decisions

Public utilities 1

1. Public utilities

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to supervise and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16-13-1 et seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23, 24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⚷ 113

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

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

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

The governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until

completion of the construction, to be remitted to and administered by the municipal bond commission by expending and paying the costs and expenses of construction and operation in the manner as provided by said ordinance.

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

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

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

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

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

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

Any municipal corporation exercising the powers given herein has authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery, or works necessary to comply with the order of the director of the division of environmental protection or the environmental quality board, and the authority provided herein to establish, maintain and collect rates, fees or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as the article provides for or requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection with the bonds: Provided, That except

for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of the municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article: Provided, however, That the jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

Acts 1955, c. 135; Acts 1967, c. 105; Acts 1994, c. 61; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ⚷712.
Westlaw Topic No. 268.
C.J.S. Municipal Corporations § 1535.

Notes of Decisions

In general 1

1. **In general**

Under provisions of statute relating to contract with other municipalities for service of sewage works, city which ordered construction of sewage disposal plant was authorized to contract with town to provide that town would have the right to use part of the capacity of the plant in return for contributing to its cost and town was authorized to enter into such contracts with city for the use of the plant, and fact that town was unable to sell revenue bonds because it was not allowed to have part ownership in the plant or in the interceptor sewers did not mean that town was not liable for payments agreed to under the contracts, where city offered to buy the revenue bonds issued by the town. Code, 16-13-9, 16-13-19, 16-13-23a. City of Morgantown v. Town of Star City, 1973, 195 S.E.2d 166, 156 W.Va. 529. Municipal Corporations ⚷ 277

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

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof.

Acts 1933, Ex. Sess., c. 25, § 24.

Library References

Statutes ⚷235.
Westlaw Topic No. 361.
C.J.S. Statutes § 376.

Notes of Decisions

In general 1

1. **In general**

Under contract between municipal sanitary board and contractor requiring contractor to bear cost and expense of damage to surface, overhead or subsurface structures in construction of sanitary sewer system, contractor was liable to water company for expense of removal of all water and other pipes under streets which interfered with construction of sewer system.

Note 1

Code, 16-13-1 et seq., 16-13-17, 16-13-24. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⟹ 400

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Annotated Code of West Virginia

Using the Classification and Numbering System of the 1931 Code of West Virginia, as Amended

Chapter 16

2011
Cumulative Annual Pocket Part

Replacing 2010 Pocket Part supplementing 2008 Main Volume

Includes laws through the 2011 Regular Session

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ARTICLE 10

UNIFORM DETERMINATION OF DEATH ACT

UNIFORM DETERMINATION OF DEATH ACT 1980

Table of Jurisdictions Wherein Act Has Been Adopted

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 12A.

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama	2000 Act No. 710	7-1-2000	Code 1975, §§ 22-31-1, 22-31-2.
Arkansas	1985, No. 386		A.C.A. § 20-17-101.
California	L.1982, c. 810	9-7-1982 *	West's Ann.Cal.Health & Safety Code, § 7180.
Colorado	1981, p. 778, § 1		West's C.R.S.A. § 12-36-136.
Delaware	65 Del.Laws, c. 237	2-5-1986	24 Del.C. § 1760.
District of Columbia	1982, D.C.Law 4-68	2-25-1982 *	D.C. Official Code, 2001 Ed. § 7-601.
Georgia	1982, pp. 723, 749		O.C.G.A. § 31-10-16.
Idaho	1981, c. 258		I.C. § 54-1819.
Indiana	1986, S.B.282	3-3-1986	West's A.I.C. 1-1-4-3.
Kansas	1984, c. 345	7-1-1984	K.S.A. 77-204 to 77-206.
Maine	1983, c. 33	3-7-1983 *	22 M.R.S.A. §§ 2811 to 2813.
Maryland	1982, c. 327	7-1-1982	Code, Health-General, § 5-202.
Michigan	1992, P.A. 90	6-4-1992 *	M.C.L.A. §§ 333.1031 to 333.1034.
Minnesota	1989, c. 93	5-9-1989 *	M.S.A. § 145.135.
Mississippi	1981, c. 410	3-24-1981	Code 1972, §§ 41-36-1, 41-36-3.
Missouri	1982, H.B. 1223	8-13-1982	V.A.M.S. § 194.005.
Montana	L.1983, c. 86		MCA § 50-22-101.
Nebraska	1992, LB 906	7-15-1992	R.R.S. 1943, §§ 71-7201 to 71-7203.
Nevada	1985, c. 62	3-30-1985 *	N.R.S. 451.007.
New Hampshire	1986, c. 191:1	7-1-1987	RSA 141-D:1 to 141-D:2.
New Mexico	1993, c. 174	7-1-1993	NMSA 1978 § 12-2-4.
North Dakota	1989, c. 308	7-12-1989	NDCC 23-06.3-01, 23-06.3-02.
Ohio	1982, S. 98	3-15-1982	R.C. § 2108.40.
Oklahoma	1986, c. 262	9-11-1986	63 Okl.St.Ann. §§ 3121 to 3123.
Oregon	1987, c. 517	7-8-1987 *	ORS 432.300.
Pennsylvania	Act 1982, No. 323	2-15-1983	35 P.S. §§ 10201 to 10203.
Rhode Island	1982, c. 411		Gen.Laws 1956, § 23-4-16.
South Carolina	1984, No. 339		Code 1976, §§ 44-43-450, 44-43-460.
South Dakota	1990, c. 273		SDCL 34-25-18.1.
Utah	1989, c. 276	4-24-1989	U.C.A.1953, 26-34-1, 26-34-2.
Vermont	1981, No. 62	4-30-1981	18 V.S.A. § 5218.
Virgin Islands	1993, Act No. 5894, § 2	10-13-1993	19 V.I.C. § 869.
West Virginia	1989, c. 206		Code, 16-10-1 to 16-10-4.
Wyoming	1985, c. 223	5-23-1985	Wyo.Stat.Ann. §§ 35-19-101 to 35-19-103.

* Date of approval.

ARTICLE 13

SEWAGE WORKS AND STORMWATER WORKS

Section

16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; ten-

DEATH ACT

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75, §§ 22-31-1, 22-31-2.
§ 20-17-101.
Ann.Cal.Health & Safety Code, 30.
.R.S.A. § 12-36-136.
§ 1760.
cial Code, 2001 Ed. § 7-601.
§ 31-10-16.
4-1819.
.I.C. 1-1-4-3.
7-204 to 77-206.
S.A. §§ 2811 to 2813.
alth-General, § 5-202.
§§ 333.1031 to 333.1034.
145.135.
2, §§ 41-36-1, 41-36-3.
§ 194.005.
0-22-101.
43, §§ 71-7201 to 71-7203.
51.007.
-D:1 to 141-D:2.
78 § 12-2-4.
-06.3-01, 23-06.3-02.
.08.40.
.Ann. §§ 3121 to 3123.
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§ 10201 to 10203.
1956, § 23-4-16.
5, §§ 44-43-450, 44-43-460.
25-18.1.
3, 26-34-1, 26-34-2.
§ 5218.
§ 869.
10-1 to 16-10-4.
Ann. §§ 35-19-101 to 35-19-103.

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ment; hearing; lien and recovery; discontinuance of services.
16-13-23a. Additional powers of municipality to cease pollution.

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

United States Code Annotated

Trust Indenture Act of 1939, see 15 U.S.C.A. § 77aaa et seq.

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

A governing body has the power and duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

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

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

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

(d) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(e) The governing body may collect from all new applicants for service a deposit of $50 or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, service may not be reconnected or reinstated by the governing body until another deposit equal to $50 or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the governing body. After twelve months of prompt payment history, the governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a tenant, the governing body is not required to return the deposit until the time the tenant discontinues service with the governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities provided is delinquent. The user is liable until all rates, fees and charges are fully paid. The governing body may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water services to a delinquent user of sewer facilities ten days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments: *Provided, however*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

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

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

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

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

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

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

(*l*) Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of twenty days after they become due, the property and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all rates, fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

(m) The board collecting the rates, fees or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of water, sewer or stormwater facilities and shall not restore either water facilities or sewer facilities to any delinquent user of any such facilities until all delinquent rates, fees or charges for water, sewer and stormwater facilities, including reasonable interest and penalty charges, have been paid in full, as long as such actions are not contrary to any rules or orders of the Public Service Commission: *Provided,* That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the municipality or governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

Acts 1933, Ex. Sess., c. 25, § 16; Acts 1933, 2nd Ex. Sess., c. 48; Acts 1959, c. 125; Acts 1967, c. 105; Acts 2001, c. 212; eff. 90 days after April 14, 2001; Acts 2004, c. 185, eff. 90 days after March 12, 2004; Acts 2008, c. 202, eff. March 8, 2008; Acts 2010, c. 201, eff. June 11, 2010.

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90 days after March 12, 2004;

§ 16–13–23a. Additional powers of municipality to cease pollution

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

(b) The rates, fees or charges shall be sufficient to all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection, treatment, purification and disposal of sewage or stormwater and the repair, alteration and extension of existing sewer facilities or stormwater facilities, as may be necessary to comply with such order of the Secretary of the Department of Environmental Protection or the Environmental Quality Board, and for the operation, maintenance and repair of the entire works and system.

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

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

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

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

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

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

(i) If any rate, fee or charge is not paid within thirty days after it is due, the amount thereof, together with a penalty of ten percent and a reasonable attorney's fee, may be

recovered by the sanitary board of the municipality in a civil action in the name of the municipality.

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

(k) The jurisdiction and authority provided by this section does not extend to highways, road and drainage easements and stormwater facilities constructed, owned or operated by the West Virginia Division of Highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

(*l*) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C.F.R. § 122.26, has the authority to enact ordinances or regulations which allow for the issuance of orders, the right to enter properties and the right to impose reasonable fines and penalties regarding correction of violations of municipal stormwater ordinances or regulations within the municipal watershed served by the municipal stormwater system, as long as such rules, regulations, fines or actions are not contrary to any rules or orders of the Public Service Commission.

(m) Notice of a violation of a municipal stormwater ordinance or regulation shall be served in person to the alleged violator or by certified mail, return receipt requested. The notice shall state the nature of the violation, the potential penalty, the action required to correct the violation and the time limit for making the correction. Should a person, after receipt of proper notice, fail to correct the violation of the municipal stormwater ordinance or regulation, the municipality may make or have made the corrections of the violation and bring the party into compliance with the applicable stormwater ordinance or regulation. The municipality may collect the costs of correcting the violation from the person by instituting a civil action, as long as such actions are not contrary to any rules or orders of the Public Service Commission.

(n) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

Acts 1955, c. 135; Acts 1967, c. 105; Acts 1994, c. 61; Acts 2001, c. 212, eff. 90 days after April 14, 2001; Acts 2008, c. 202, eff. March 8, 2008.

ARTICLE 13A

PUBLIC SERVICE DISTRICTS

Section	
16–13A–7.	Acquisition and operation of district properties.
16–13A–9.	Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

§ 16–13A–7. Acquis

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State of West Virginia

Certificate

I, Natalie E. Tennant, Secretary of State of the State of West Virginia, hereby certify that

THIS IS A TRUE COPY OF CHAPTER 22C, ARTICLE 2 OF THE WEST VIRGINIA CODE, AND CHAPTER 22C, ARTICLE 2 OF THE 2011 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.

Given under my hand and the Great Seal of the State of West Virginia on
December 8, 2011

Natalie E. Tennant

Secretary of State

ARTICLE 2

WATER POLLUTION CONTROL REVOLVING FUND ACT

Section

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

§ 22C-2-1. Definitions

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

(a) "Authority" means the water development authority provided for in section four, article one of this chapter.

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

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

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

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

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

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

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

(c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant

to the clean water act, as amended, the federal safe drinking water act, as amended or by the executive order of the governor issued to comply with federal laws relating to the acts.

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

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

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

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

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

(3) Drainage facilities and projects;

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

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

(6) Other projects allowable under federal law.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

United States Code Annotated

Water Pollution Prevention and Control,
Generally, see 33 U.S.C.A. § 1251 et seq.
Effluent limitations, see 33 U.S.C.A. § 1311 et seq.
Water Pollution, Waste Treatment Management, grants, see 33 U.S.C.A. § 1281 et seq.

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

The division of environmental protection shall act as the instrumentality that is empowered to enter into capitalization agreements with the United States environmental protection agency, to accept capitalization grant awards made under the federal clean water act, as amended, the safe drinking water act, as amended, and other federal laws and to otherwise manage the fund provided for in this article in accordance with the requirements of said federal laws.

Acts 1994, c. 61.

Library References

Environmental Law ⚷216.
Westlaw Topic No. 149E.
C.J.S. Health and Environment §§ 130, 172.

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

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

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, to:

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

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

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

(d) The authority shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

Administrative Code References

Program rules, see W. Va. Code St. R. § 47-31-1 et seq.

Library References

Environmental Law ⚷179, 180, 216.
States ⚷127.
Westlaw Topic Nos. 149E, 360.
C.J.S. Health and Environment §§ 130, 172.
C.J.S. States §§ 386 to 387.

§ 22C-2-4. Annual audit

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

Acts 1994, c. 61.

Library References

Environmental Law ⚷179, 180, 216.
States ⚷121.
Westlaw Topic Nos. 149E, 360.
C.J.S. Health and Environment §§ 130, 172.
C.J.S. States §§ 322 to 323, 372.

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

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

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

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

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

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

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

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

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

Library References

Environmental Law ⟹221.
Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 130, 150, 172.

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

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

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

Acts 1994, c. 61.

Administrative Code References

Construction grants program rules, see W. Va. Code St. R. § 47-33-1 et seq.

Library References

Environmental Law ⟹180, 217.
States ⟹127.
Westlaw Topic Nos. 149E, 360.

C.J.S. Health and Environment §§ 130, 133, 172.
C.J.S. States §§ 386 to 387.

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

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That the rules shall be

consistent with the regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

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

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

Library References

Environmental Law ⚷179, 180, 574, 595(3).
Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 105 to 106, 111, 113 to 114, 116, 125, 172.

§ 22C–2–8. Conflicting provisions

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

Acts 1994, c. 61.

Library References

Environmental Law ⚷167, 170, 575.
Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 106, 111, 172.

West's

Annotated Code of West Virginia

Using the Classification and Numbering System of the 1931 Code of West Virginia, as Amended

Chapters 22B to 23

2011
Cumulative Annual Pocket Part

Replacing 2010 Pocket Part supplementing 2006 Main Volume

Includes laws through the 2011 Regular Session

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public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

Acts 1994, c. 61; Acts 2008, c. 203, eff. June 5, 2008.

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

(a) The aggregate principal amount of bonds and notes issued by the authority may not exceed $500 million outstanding at any one time: *Provided*, That before the authority issues bonds and notes in excess of $400 million the Legislature must pass a resolution authorizing this action: *Provided, however*, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any refunding bonds or notes, shall be excluded.

(b) In addition to the amounts authorized by subsection (a) of this section, the Water Development Authority may issue, pursuant to section seventeen-b, article fifteen-a, chapter thirty-one of this code, bonds or notes in the aggregate principal amount not to exceed $180 million. This authorization is for the limited purpose of providing grants for capital improvements for publicly owned wastewater treatment facilities with an authorized permitted flow of four hundred thousand gallons per day or more which are required to maintain compliance with certain standards for discharges into watersheds in accordance with said section seventeen-b.

Acts 1994, c. 61; Acts 1995, c. 252, eff. 90 days after March 3, 1995; Acts 2000, c. 278, eff. March 11, 2000; Acts 2011, c. 179, eff. June 10, 2011.

ARTICLE 2

WATER POLLUTION CONTROL REVOLVING FUND ACT

Section

22C-2-1. Definitions.
22C-2-5. Collection of money due to the fund.

§ 22C-2-1. Definitions

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

(a) "Authority" means the Water Development Authority provided for in section four, article one of this chapter.

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

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

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

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

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

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

(6) Other items that the Department of Environmental Protection determines to be reasonable and necessary.

(c) "Fund" means the State Water Pollution Control Revolving Fund provided for in this article as it may be expanded or modified, from time to time, pursuant to the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, as amended, the Federal Safe Drinking Water Act 42 U.S.C. § 300f through § 300j-26, inclusive, as amended, or by the executive order of the Governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the Department of Environmental Protection or the agency designated by an order of the Governor as having the primary responsibility for administering the fund pursuant to the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, as amended, and the Federal Safe Drinking Water Act 42 U.S.C. § 300f through § 300j-26, inclusive, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, district, public service district, commission, banking institution, political subdivision, regional governmental authority, state government agency, interstate agency or not-for-profit association or corporation in West Virginia.

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

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

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

(3) Drainage facilities and projects;

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

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

(6) Other projects allowable under federal law.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996; Acts 2007, c. 132, eff. June 8, 2007.

United States Supreme Court

Environmental law,
Clean water, dams, discharge potential, state certification requirement under
Clean Water Act, see S.D. Warren Co. v. Maine Bd. of Environmental Protection, 2006, 126 S.Ct. 1843.

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

United States Supreme Court

Environmental law,
Clean water, dams, discharge potential, state certification requirement under
Clean Water Act, see S.D. Warren Co. v. Maine Bd. of Environmental Protection, 2006, 126 S.Ct. 1843.

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

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

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

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§ 22C-2-7. Environ

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COUNTY A

Section
22C-4-10. Mandatory dis
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§ 22C-4-10. Mandat solid sion

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

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

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

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

(b) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision. The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

(c) For loans made for projects defined in subdivision (6), subsection (f), section one of this article, at the direction of the Department of Environmental Protection, the authority shall take a security or other interest in real or personal property with the right to foreclose upon a default to secure loans made from the fund.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996; Acts 2007, c. 132, eff. June 8, 2007.

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

United States Supreme Court

Environmental law;
Clean water, dams, discharge potential, state certification requirement under Clean Water Act, see S.D. Warren Co. v. Maine Bd. of Environmental Protection, 2006, 126 S.Ct. 1843.

ARTICLE 4

COUNTY AND REGIONAL SOLID WASTE AUTHORITIES

Section
22C–4–10. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the Public Service Commission to file report.

§ 22C–4–10. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the Public Service Commission to file report

(a) Each person occupying a residence or operating a business establishment in this state shall either:

(1) Subscribe to and use a solid waste collection service and pay the fees established therefor; or

(2) Provide proper proof that said person properly disposes of solid waste at least once within every thirty-day period at approved solid waste facilities or in any other lawful manner. The Secretary of the Department of Environmental Protection shall promulgate rules pursuant to chapter twenty-nine-a of this code regarding an approved method or methods of supplying such proper proof. A civil penalty of one hundred fifty dollars may be assessed to the person not receiving solid waste collection services in addition to the unpaid fees for every year that a fee is not paid. Any person who violates the provisions of this section by not lawfully disposing of his or her solid waste or failing to provide proper proof that he or she lawfully disposes of his or her solid waste at least once a month is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than fifty dollars nor more than one thousand dollars or sentenced to perform not less than ten nor more than forty

CHARTER
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."

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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, (Muni. ch.), ch. 4, § 3, divided the city into seventeen wards. By Ordinance No. 308, amendatory of this section, enacted Nov. 10, 1958, and ratified at a special election held Dec. 13, 1958, the city was redivided into nineteen wards. Due to subsequent changes in population and the resulting necessity for more proportionate representation in the city council, the council on Sept. 19, 1966, by affirmative vote of more than two-thirds of the members, enacted Ord. No. 870, amendatory of this section, by redividing the city into eighteen wards, described by metes and bounds, subject to a referendum as provided in W. Va. Code § 8-4-7; and at a special election on Nov. 8, 1966, held pursuant to prior notice duly published, a majority of the legal votes cast were in favor of the amendment, which thereupon became effective with the declaration by the council of the results of that election, all in conformity with the provisions of W. Va. Code § 8-4-7. The text of this section, as so amended, is omitted as obsolete in some respects due to subsequent addition of territory, but it has been saved from repeal and is on file in the office of the city clerk. Another reason for omission of the text of this section was that Ordinance No. 1570, 7-1-74, directed the mayor to appoint two special committees, one to take a census of the city and the other, upon completion of such census, to prepare and submit to the council a report, with recommendations for the division of the city into wards and the number and boundaries thereof, the number of councilmen to represent each ward, and the number of councilmen at large, together with a proposed ordinance to effect such recommendations. Ordinance No. 3040, adopted on Dec. 20, 1982, redivided the city into twenty wards, described by metes and bounds. For current division of the city into wards and the boundaries thereof, see the official map of the city which, when completed and approved by the city council, will be placed on file in the office of the city clerk.

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.

Charter
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 21st day of June, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 2011

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

Todd C. Kaufman
Circuit Judge

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.

Subscribed and sworn to before me the undersigned authority, this 22nd day of June, 1999.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Melissa D. Hughes
Office of City Clerk
P. O. Box 2749
Charleston, WV 25330
My Commission Expires February 3, 2009

Melissa D. 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, Rick Bueka

who has been duly elected to the office of City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 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 City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, Tom Lane

who has been duly elected to the office of City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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 D. Ealy

who has been duly elected to the office of City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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 Clarence Kirk

who has been duly elected to the office of City Council 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.

William C Kirk
(Signature)

Subscribed and sworn to before me the undersigned authority, this 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, Courtney C. Persinger

who has been duly elected to the office of City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, CHRISTOPHER SCOTT DODRILL

who has been duly elected to the office of City Council 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.

Christopher S. Dodrill
(Signature)

Subscribed and sworn to before me the undersigned authority, this 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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 City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, Joseph T. Deneault

who has been duly elected to the office of City Council 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.

Joseph T. Deneault
(Signature)

Subscribed and sworn to before me the undersigned authority, this 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 601 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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 H. Miller, Jr.

who has been duly elected to the office of City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, Shannon Snodgrass

who has been duly elected to the office of City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, Brent Joseph Burton

who has been duly elected to the office of City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, ANDREW N. RICHARDSON

who has been duly elected to the office of City Council 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.

Andrew N. Richardson
(Signature)

Subscribed and sworn to before me the undersigned authority, this 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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 Haas Bobby Haas

who has been duly elected to the office of City Council 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.

Bobby Haas
(Signature)

Subscribed and sworn to before me the undersigned authority, this 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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 E. HARRISON

who has been duly elected to the office of City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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 City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, Samuel A. Minardi

who has been duly elected to the office of City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, Susan F Salisbury

who has been duly elected to the office of City Council 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.

Susan F Salisbury
(Signature)

Subscribed and sworn to before me the undersigned authority, this 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, Michael Nichols

who has been duly elected to the office of City Council 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.

Michael R. Nichols
(Signature)

Subscribed and sworn to before me the undersigned authority, this 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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 Stajduhar

who has been duly elected to the office of City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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 City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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 City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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 City Council 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 therefor~~e~~, so ~~help me~~ God.

(Signature)

Subscribed and sworn to before me the undersigned authority, this 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, Kasey Russell

who has been duly elected to the office of City Council 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.

Kasey Russell
(Signature)

Subscribed and sworn to before me the undersigned authority, this 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, Robert S Reishman

who has been duly elected to the office of City Council 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 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, _____

who has been duly elected to the office of City Council 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 21st day of June, 2011.

_____
Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 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, Robert Edward Sheets

who has been duly elected to the office of City Council 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.

Robert Edward Sheets
(Signature)

Subscribed and sworn to before me the undersigned authority, this 21st day of June, 2011.

Notary Public in and for Kanawha County

My commission expires on the 19th day of September, 2011.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
ERIN VRIENDT
OFFICE OF CITY CLERK
RM. 301 CITY HALL, PO BOX 2749
CHARLESTON, WV 25330
My commission expires September 19, 2011

By Mr. Crawford:

Bill No. 1484--A Bill to amend and reenact section one, article twenty-three, Streets and Public Services Law, Code of the City of Charleston, West Virginia, one thousand nine hundred fifty-seven, as amended, appointing two members to the Sanitary board as provided by chapter sixteen, article thirteen, section eighteen, Code of West Virginia, one thousand nine hundred thirty-one, as amended.

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

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

Section 1. Sanitary board created; membership; terms.

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

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

John D. Smallridge is hereby appointed as a member of the Sanitary Board for the term expiring the nineteenth day of March, one thousand nine hundred seventy-six.

3. The City Council hereby finds that it is a matter of urgent concern and a pressing public emergency requiring immediate action to update the Code of the City of Charleston to be in compliance with the Code of West Virginia.

The question being on the passage of the bill, a roll call was taken and there were--yeas 24, nays none and absent one, as follows:

YEAS: Barnett, Bennett, Bird, Brawley, Gay, Gunnoe, Crawford, Cummings, Duncan, Fling, Hall, Hunt, Kennedy, Layne, Matthews, Nunn, O'Connor, Preston, Quick, Shorts, Silverstein, Smith, Vandervilt and Mayor Hutchinson.

NAYS: None.

ABSENT: Mullins.

So, all members present and voting having voted in the affirmative, the Mayor declared the bill (No. 1484) unanimously passed.

(The provisions of section eleven, article four (d), chapter eight of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, requiring the affirmative vote of two-thirds of the members elected to the Council to pass a bill in the case of a pressing public emergency is satisfied.)

Sec. 23-23. Obstruction.

No person shall obstruct, impede or cause to be impeded or obstructed the flow of any public sewer, nor interfere with the free discharge or ventilation thereof, nor dig up such sewer or any appurtenance thereof. (Code 19[illegible] pt. 3, art. 23, § 3.)

Sec. 23-24. License required to engage in business of laying or connecting sewers or drainages.

It shall be unlawful for any person to engage in the business of laying or constructing sewers or drainages in, under or upon any of the streets, alleys or public highways of the city without having first annually secured from the sanitary board a license therefor, paying for such license the sum of twenty five dollars.

No such license shall be issued until the sanitary board is satisfied of the reliability and capacity of the applicant to do and perform in a good and workmanlike manner the particular form, class or kind of work that shall be specified in the application for license for any or all of the purposes set forth in this section, and until the applicant shall also have given any bond required by any other ordinance of the city in relation to such matters. (Code 1957, pt. 3, art. 1, § 3.)

Article II. Sanitary Board.

For a case holding that the ordinance codified in this article is valid and constitutional, and that a contract between the sanitary board created by such ordinance and a construction company in furtherance of the provisions of the ordinance was valid, see West Va. Water Service Co. v. Cunningham, 143 W. Va. 1, 98 S.E. 24 821 (1957).

As to sewerage service charges when water from commercial wells is discharged from premises into city sewers, see § 23-38 of this Code.

Sec. 23-25. Created; powers and duties; compensation; appointment and term of members.

There is hereby created in and for the city a sanitary board, which shall be charged with the custody, supervision, control, administration, operation and maintenance of the municipal sewage system, all as provided and prescribed by article 13 of chapter 16 of the Code of West Virginia. The sanitary board shall be composed of the mayor and two persons appointed by the city council, one of whom shall be a registered professional engineer; provided, that when

so city sewer is under construction a registered professional engineer need not be a member of the board. The two appointed members of the board shall each serve for a term of three years and until his successor is duly appointed and has qualified, and vacancies shall be filled for the unexpired term only. (Code 1957, pt. 9, art. 26, §§ 1, 2; Ord. No. 1458, 11-18-72, § 1.)

Editor's note.—Original appointments were made pursuant to the ordinance here codified in such time and for such terms that one vacancy for an appointed member occurs March 16, 1973 and every three years thereafter, and one such vacancy occurs March 16, 1976 and every three years thereafter.

For state law basis of this section, see W. Va. Code, § 16-13-16.

Sec. 21-26. Officers; salaries; bond of treasurer.

The sanitary board shall elect a vice chairman from its members and shall designate a secretary and treasurer (who may be one and the same person) who need not be members of the board and who shall hold office at the will of the board.

Each member of the board, other than the mayor, shall receive such salary as may be provided from time to time by the city council and shall be entitled to payment for his reasonable expenses incurred in the performance of his duties.

The secretary and treasurer shall be paid such reasonable compensation for services as from time to time may be fixed by the city council, and the treasurer shall give bond, with qualified corporate surety, in the amount of five thousand dollars or such other amount as the council may require, conditioned for the proper application of all moneys received by him as such and for the faithful performance of the duties of his office.

All compensation, and all expenses, incurred by the sanitary board, its officers and employees, shall be paid solely from funds authorized to be collected and received by the board as provided by article 13, chapter 16 of the Code of West Virginia. (Code 1957, pt. 9, art. 26, § 3.)

For state law basis of this section, see W. Va. Code, § 16-13-16.

Sec. 21-27. Powers and duties.

(a) The construction, acquisition, improvement, equipment, custody, operation, maintenance and administration of all works for the collection, treatment or disposal of sewage within the city and in such other areas as may be

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

(Section 24 City Charter)

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

I, JOHN H. TINNEY, WHO HAVE BEEN DULY APPOINTED TO THE OFFICE OF SECRETARY OF THE SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, DO SOLEMNLY SWARE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY AND IMPARTIALLY DISCHARGE THE DUTIES OF SAID OFFICE, DURING MY CONTINUANCE THEREIN, TO THE BEST OF MY SKILL AND JUDGEMENT; AND THAT I WILL NOT, IN ANY WAY, OR MANNER, BECOME PECUNIARILY INTERESTED DIRECTLY OR INDIRECTLY IN ANY CONTRACT WITH THE CITY, IN ANY FRANCHISE GRANTED BY IT, OR IN THE PURCHASE OF SUPPLIES THEREFOR, SO HELP ME GOD.

John H. Tinney

Subscribed and sworn to before me, the undersigned authority, this 19th day of February, 2001.

NOTARY PUBLIC
JUNE FARNSWORTH

June Farnsworth
Notary Public in and for Kanawha County

My commission expires on the 7th day of September, 2004

OFFICER'S OATH

(Section 24 City Charter)

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

I, SAMUEL M. BOWLING, P.E., WHO HAVE BEEN DULY APPOINTED TO THE OFFICE OF MEMBER OF THE SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA, DO SOLEMNLY SWARE THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF WEST VIRGINIA AND THAT I WILL FAITHFULLY AND IMPARTIALLY DISCHARGE THE DUTIES OF SAID OFFICE, DURING MY CONTINUANCE THEREIN, TO THE BEST OF MY SKILL AND JUDGEMENT; AND THAT I WILL NOT, IN ANY WAY, OR MANNER, BECOME PECUNIARILY INTERESTED DIRECTLY OR INDIRECTLY IN ANY CONTRACT WITH THE CITY, IN ANY FRANCHISE GRANTED BY IT, OR IN THE PURCHASE OF SUPPLIES THEREFOR, SO HELP ME GOD.

Subscribed and sworn to before me, the undersigned authority, this 16th day of February, 2001

Kathleen Ann Dan

Notary Public in and for Kanawha County

My commission expires on the 20 day of March, 2006

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: February 17, 2011

FINAL

3/9/2011

CASE NO. 10-1732-S-CN

CITY OF CHARLESTON SANITARY BOARD,
Charleston, Kanawha County.
Application for a certificate of convenience and necessity to construct improvements to existing wastewater system in Kanawha Two Mile area, Kanawha County.

RECOMMENDED DECISION

On November 4, 2010, the City of Charleston Sanitary Board (City) filed an application for a certificate of convenience and necessity to construct improvements to the existing wastewater system in the Kanawha Two Mile area, Kanawha County. The City requested a waiver of the requirement to file a class cost of service study since the project would not require the City to increase its sewer rates. The City stated that the project would be funded by a West Virginia Department of Environmental Protection Clean Water State Revolving Fund loan of approximately $25,877,009, with a 2% interest rate and a 1% annual administrative fee for a term not to exceed 20 years.

By Commission Order dated November 4, 2010, the City was required to publish the Notice of Filing of its application once in a qualified newspaper as provided in West Virginia Code §59-3-1 et seq., published and of general circulation in Kanawha County, providing a 30-day protest period. The Notice of Filing also provided that, if substantial protest was not received within the 30-day protest period, the Commission might waive formal hearing and grant the certificate based upon its review of the evidence submitted with the application.

By Commission Order dated November 16, 2010, the proceeding was referred to the Division of Administrative Law Judges with a decision due date of on or before March 21, 2011, if no substantial protest to the application was filed within 30 days after the required notice had been provided, or on or before April 18, 2011, if substantial protest had been received within 30 days after the required notice had been provided.

On November 18, 2010, the City filed a publication affidavit showing that the Notice of Filing was published on November 12, 2010, in The Charleston Gazette, a newspaper published and generally circulated in Kanawha County.

On December 7, 2010, Staff Attorney C. Terry Owen filed the Initial Joint Staff Memorandum to which was attached the December 7, 2010 Engineering and Utilities Division Initial Memorandum prepared by Jonathan Fowler, P.E., Engineer, Engineering Division, and James Boggess, Utilities Analyst II, Utilities Division. Staff indicated that it was reviewing the case and would timely file a final recommendation.

On January 21, 2011, Staff Attorney Owen filed the Final Joint Staff Memorandum to which was attached the January 21, 2011 Engineering and Utilities Divisions Final Recommendation prepared by Mr. Fowler and Mr. Boggess. Staff reported that the City presently serves approximately 23,990 customers. The existing sewage collection system in the Kanawha Two Mile area is old and in poor condition and subject to excessive levels of infiltration and inflow. The project is designed to replace and/or relocate the sewer lines and appurtenances which have been previously identified as posing the most trouble. Engineering Staff has reviewed the project's engineering study and concurs with the City's analysis and conclusions with respect to the scope of the work for the project. The replacement of old and leaky lines will free up both collection/transmission capacity as well as treatment capacity and will provide capacity for potential new customers both within and outside of the project area. The proposed improvements will also reduce long-term system operation and maintenance (O&M) costs. Engineering Staff supports the current project as being of appropriate scope and necessary to insure the long-term effectiveness and reliability of the system.

The proposed project will include the replacement of approximately 93,400 feet (17.7 miles) of various sizes and classes of gravity sewer lines and appurtenances. Although the new lines will generally be laid along the path of existing lines, approximately 1,000 easements will have to be secured. The project is estimated to cost $25,877,009 and have a construction cost of $17,771,000. Staff opined that the engineering design and project inspection costs ($2,366,700, or 13.3% of the construction cost) for the project were generally acceptable. Staff's review of the plans and other technical documents provided by the City found no conflict with the Commission's Rules and Regulations for the Government of Sewer Utilities.

Engineering Staff recommended contingent approval of the project without specifically approving the project plans and specifications. However, any significant changes in the project design or scope would require reopening of the case. Although the project would have no immediate or short-term impact upon system O&M costs, in the longer term the project would reduce O&M costs and the costs for future system development. Most of the major permits and approvals necessary for the construction of the project have been secured. Engineering Staff recommended that the Certificate of Convenience and Necessity be issued contingent upon the City's receipt of all necessary federal, state and local permits and approvals for the proposed construction. Construction should not begin prior to receipt of all required permits.

Financial Staff reported that the project was to be funded entirely by a West Virginia Department of Environmental Protection Clean Water State Revolving Fund loan of approximately $25,877,009. The loan is to be repaid over 20 years at a 2% rate of interest and an administrative fee of 1%. Staff amortized the loan at 2% interest over 20 years which

resulted in debt service of $1,570,889. The 1% administrative fee, an O&M expense, is $140,253. The required bond reserve account is being pre-funded with project funds. Going-level O&M expenses and all project-related expenses are supported by the City's current rates and charges. At pro forma, the cash flow analysis results in a cash surplus of $1,474,188 and a debt coverage of 121.72%.

In summation, Staff recommended that (1) the Commission grant the Sanitary Board of the City of Charleston a Certificate of Convenience and Necessity to construct improvements to its wastewater collection system, as more fully defined in the engineering plans and contract documents on file with the Engineering Division; (2) the proposed financing be approved; (3) the City be required to seek Commission approval of any changes in the plans or scope of the project. If there are changes in the rates to be charged associated with the project, the City must seek Commission approval of such changes; however, if changes in the proposed financing or costs result in no change in project-related rates and charges, the City need only to file an affidavit prepared by its accountant; (4) the City be required to file a copy of the project engineer's certified bid tabulation for all contracts or vendor bids associated with the project within 10 days of bid opening dates; (5) the City be required to file copies of the Certificate of Substantial Completion for all contracts or vendor bids associated with the project within 10 days of issuance of such documents; and (6) the City be required to file a copy of the West Virginia Department of Environmental Protection's approval of the design documents as soon as the approval is received.

On February 2, 2011, the City filed a response in opposition to Staff's final recommendations. Specifically, the City objected to Staff's recommendation that the City obtain approval of "any changes in the plans" of the project. The City requested that the Commission modify Staff's recommendation to require the City to seek Commission approval only of any change in the scope of the project or any material change in the plans that affects customer service or requires re-permitting by the DEP.

By Procedural Order dated February 4, 2011, Staff was required to file a substantive written response to the City's filing of February 2, 2011. The City was also required to file a further written response to Staff's filing and indicate whether a hearing on the issue was desired.

On February 7, 2011, Staff Attorney Owen filed the Further Final Joint Staff Memorandum to which was attached the February 3, 2011 Engineering Division Further Final Memorandum prepared by Mr. Fowler. Mr. Fowler had no objection to the City's request since the request was consistent with current practices. Legal Staff recommended that the City's requested change to the historically proven Commission and Staff language be denied since there had not been prior problems with the use of such language.

On February 11, 2011, the City filed a response in which, based upon the Further Final Joint Staff Memorandum, it withdrew its objection to Staff's recommended language. The City also indicated that it did not require a hearing on the matter.

As of the date of this Order, no protests have been filed with the Public Service Commission.

Upon consideration of the above, a certificate of convenience and necessity should be granted to the City of Charleston Sanitary Board to construct improvements to an existing wastewater system in the Kanawha Two Mile area of Kanawha County. Additionally, the City's request for a waiver of the requirement to file a class cost of service study should be granted since the project would not require the City to increase its sewer rates. The project is necessary because the existing sewage collection system in the Kanawha Two Mile area is old and in poor condition and subject to excessive levels of infiltration and inflow. The project is economically feasible and financially viable because no rate increase will be necessary due to the project. Most of the major permits and approvals necessary for the construction of the project have been secured. Staff's review of the plans and other technical documents provided by the City found no conflict with the Commission's Sewer Rules. Finally, the City gave proper notice of its application and no protests have been filed with the Public Service Commission.

FINDINGS OF FACT

1. The City of Charleston Sanitary Board filed an application with the Commission under West Virginia Code §24-2-11 for a certificate of convenience and necessity and for approval of the financing of the project. (See, November 4, 2010 application; Final Joint Staff Memorandum with attachment filed January 21, 2011).

2. The project will be funded by a West Virginia Department of Environmental Protection Clean Water State Revolving Fund loan of approximately $25,877,009, with a 2% interest rate and a 1% annual administrative fee for a term not to exceed 20 years. (See, November 4, 2010 application; Final Joint Staff Memorandum with attachment filed January 21, 2011).

3. By Commission Order dated November 4, 2010, the City was directed to give notice of the filing of its application by publishing the Notice of Filing attached to the Order. The City published the Notice of Filing in The Charleston Gazette on November 12, 2010, a qualified newspaper as provided in West Virginia Code §§ 59-3-1 et seq., published and of general circulation in Kanawha County. No protests have been received to the application either within the 30-day protest period or as of the date of this Order. (See, affidavit of publication filed November 18, 2010; case file generally).

4. The project will replace old and leaky lines which will free up both collection/transmission capacity as well as treatment capacity and will provide capacity for potential new customers both within and outside of the project area. The project will also reduce long-term system operation and maintenance costs. (See, Final Joint Staff Memorandum with attachment filed January 21, 2011).

5. Commission Staff has reviewed the project's plans, specifications and other technical documents provided by the City and has

found no conflict with the Commission's Sewer Rules. (See, Final Joint Staff Memorandum with attachment filed January 21, 2011).

6. Commission Staff recommended that approval for the application be granted and the project be certificated. (See, Final Joint Staff Memorandum with attachment filed January 21, 2011).

CONCLUSIONS OF LAW

1. The public convenience and necessity require the proposed project.

2. The proposed project is financially feasible and economically viable, since no rate increase is needed.

3. A certificate of public convenience and necessity should be granted to the City of Charleston Sanitary Board to construct improvements to the existing wastewater system in the Kanawha Two Mile area, Kanawha County, as described in the application filed on November 4, 2010.

4. The certificate can be granted without hearing since notice of the project was properly published, with no protests having been filed in response thereto, and since Commission Staff has recommended approval of the project.

5. Should the scope, plans or financing for the project change, the City must obtain prior Commission approval before commencing construction. Changes in project costs do not require separate approval if those changes do not affect rates and the City submits an affidavit from a certified public accountant verifying that the rates will not be affected by such changes.

6. The City must obtain and furnish to the Commission a copy of all governmental and other permits required for the project prior to commencing construction.

ORDER

IT IS, THEREFORE, ORDERED that the application for a certificate of public convenience and necessity filed with the Commission on November 4, 2010, by the City of Charleston Sanitary Board, pursuant to West Virginia Code §24-2-11, to construct certain additions and improvements to the City's existing sewer system, at a total cost of $25,877,009, be, and hereby is, granted.

IT IS FURTHER ORDERED that the proposed financing for the project, comprised of a West Virginia Department of Environmental Protection Clean Water State Revolving Fund loan of $25,877,009, with a 2% interest rate and a 1% annual administrative fee for a term not to exceed 20 years, be, and it hereby is, approved.

IT IS FURTHER ORDERED that, should the scope, plans or financing for the project change, the City of Charleston Sanitary Board must obtain

prior Commission approval before commencing construction. Changes in project cost do not require separate approval if those changes do not affect rates and the City submits an affidavit from a certified public accountant to this effect.

IT IS FURTHER ORDERED that, within ten (10) days from the date the bids are tabulated, the City of Charleston Sanitary Board submit a copy to the Commission of the project bids for all contracts or vendor bids associated with the project, making the bids a part of the Commission's file in this case.

IT IS FURTHER ORDERED that, prior to commencing construction, the City of Charleston Sanitary Board file a copy with the Commission of all permits, certificates and other documentation required from other governmental agencies and authorities.

IT IS FURTHER ORDERED that the City of Charleston Sanitary Board file a copy of the West Virginia Department of Environmental Protection's approval of the design documents as soon as the approval is received.

IT IS FURTHER ORDERED that, within ten (10) days of receipt of the certificate of substantial completion, the City of Charleston Sanitary Board notify the Commission when the project engineer has performed the substantial completion inspection and file with the Commission a copy of the certificate of substantial completion for all contracts or vendor bids associated with the project.

IT IS FURTHER ORDERED that, if this project requires the use of Division of Highways' rights-of-way, the City of Charleston Sanitary Board comply with all rules and regulations of the Division of Highways regarding the use of those rights-of-way.

IT IS FURTHER ORDERED that the request of the City of Charleston Sanitary Board for a waiver of the requirement to file a class cost of service study is granted.

IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and by electronic service upon all parties of record who have filed an e-service agreement with the Commission and by United States Certified Mail, return receipt requested, upon all parties of record who have not filed an e-service agreement with the Commission.

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

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

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission.

Deborah Yost VanDervort
Administrative Law Judge

DYV:s:cdk
101732aa.wpd

WEST VIRGINIA

Infrastructure & Jobs Development Council

Gov. Joe Manchin, III
Chairman

Kenneth Lowe, Jr.
Public Member

David "Bones" McComas
Public Member

Ron Justice
Public Member

James W. Ellars, P.E.
Executive Director

Barbara J. Pauley
Administrative Secretary

September 1, 2010

Larry Roller, General Manager
The Sanitary Board of the City of Charleston
208 26th Street, West
Charleston, WV 25302

Re: Charleston Sanitary Board (Kanawha Two-Mile)
Sewer Project 2009S-1162 (Revised)

Dear Mr. Roller,

The West Virginia Infrastructure and Jobs Development Council (Infrastructure Council) has reviewed the Charleston Sanitary Board's (Board) revised preliminary application for the replacement and rehabilitation of existing sewers in the Kanawha Two Mile area, which includes Sissonville Drive, Chandler Drive, Sugar Creek Drive and Scraggs Drive areas (Project).

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

Upon consideration of the revised preliminary application, the Infrastructure Council determined that the Board should pursue a $25,877,009 Clean Water State Revolving Fund loan (3%, 20 yrs) to fund this Project. Please contact the West Virginia Division of Environmental Protection office at 304-926-0499 (X1611) for specific information on the steps the Board needs to follow to apply for these funds. **Please note that this letter <u>does not</u> constitute funding approval from this agency.**

If you have any questions regarding this matter, please contact James W. Ellars at 304-558-4607 (X201).

Sincerely,

Kenneth Lowe, Jr.

Enclosure

cc: Mike Johnson, P.E., DEP (w/o enclosure) *(via e-mail)*
Timothy L. Utt, P.E., Burgess & Niple, Inc.

300 Summers Street, Suite 980 • Charleston, WV 25301 • Phone (304) 558-4607 • Fax (304) 558-4609

www.wvinfrastructure.com

SRF-LP-1
(10/11)

LOAN AGREEMENT

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

THE CITY OF CHARLESTON (2009S-1162/C-544272)
(Local Government)

W I T N E S S E T H:

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

The Project and the System

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

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Local Government has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Local Government by the Consulting Engineers.

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

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

rights of the Authority and DEP with respect to the System pursuant to the pertinent provisions of the Act.

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

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

2.7 The Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Local Government, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local

Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

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

2.10 The Local Government shall require the Consulting Engineers to submit the final or updated Operation and Maintenance Manual, if necessary as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ a state certified plant operator prior to the Project being 50% complete and notify the DEP of such employment. The Local Government shall retain the operator(s) to operate the System during the entire term of this Loan Agreement.

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

2.12 The Local Government, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward a copy by the 20th of each month to DEP and the Authority.

2.13 The Local Government shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia (the "PSC").

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

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

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

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

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

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

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

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

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

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

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

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

(j) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority and DEP shall have received a certificate of the Consulting Engineers, or such

other person or firm experienced in the financing of wastewater treatment projects and satisfactory to the Authority and DEP, to such effect, such certificate to be in form and substance satisfactory to the Authority and DEP, and evidence satisfactory to the Authority and DEP of such irrevocably committed grants.

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, DEP and the Local Government. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing."

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

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

ARTICLE IV

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

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

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

(i) to pay Operating Expenses of the System;

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

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

improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

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

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

(b) Covenants substantially as follows:

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

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

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

(iv) That, except as otherwise required by State law or the Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the Local Bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Government shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if

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

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

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

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

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

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

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

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

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

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

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

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

(xvii) That the Local Government shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Local Government shall complete the Monthly Payment Form, attached hereto as Exhibit F and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Local Government will furnish to the Authority, annually, at such time as it is required to perform its rebate

calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

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

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

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

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

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

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall

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

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

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

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

ARTICLE V

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

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and

collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

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

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

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

ARTICLE VI

Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by the Local Government in the terms and covenants of this Loan Agreement, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Loan Agreement.

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

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

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

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

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

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

ARTICLE VII

Miscellaneous

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

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

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

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

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

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

7.7 This Loan Agreement shall terminate upon the earlier of:

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

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

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

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

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

THE CITY OF CHARLESTON

(SEAL)

By: _____
Its: Mayor
Date: December 13, 2011

Attest:

_____
Its: City Clerk

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

By: _____
Its: Director
Date: December 13, 2011

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Executive Director
Date: December 13, 2011

Attest:

_____
Its: Authorized Officer

{C2202949.1}

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

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

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

_____
Name of Person Completing Form

_____
Address

_____
Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

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

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

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

Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are $1,200, then $30 (2.5% of $1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.

The Local Government must complete the Monthly Financial Report and forward it to the Water Development Authority by the 20th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No._____, of _____, Consulting Engineers, _____, _____, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated _____.

2. The Bonds are being issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least _____ years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Schedule A attached hereto as Exhibit

A, and my firm[1] has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof[2], the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

By _____
West Virginia License No.

[SEAL]

---

[1]If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____, Esq.] and delete "my firm has ascertained that".

[2]If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (ix).

EXHIBIT E

SPECIAL CONDITIONS

A. PUBLIC RELEASE REQUIREMENT – The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, ground breaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) – Effective October 1, 2003, the Local Government that receives $500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. ASSET MANAGEMENT – The Local Government shall submit an acceptable asset management plan or where applicable, updated plans, to DEP no later than six months following substantial completion of the Project. This requirement shall be included in the bond closing documents.

D. WAGE RATES – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements.

E. CLOSING REQUIREMENTS – Closing of the Bonds is conditioned upon the receipt of an acceptable final title opinion.

EXHIBIT F

MONTHLY PAYMENT FORM

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:	
Interest	$
Principal	$
Total:	$
Reserve Account:	$

Witness my signature this ___ day of_____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

OPINION OF BOND COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated _____, ____, including all schedules and exhibits attached thereto (the "Loan Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, ____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of $_____, in the form of one bond, registered as to principal and interest to the Authority, with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning _____ 1, ____, and ending _____ 1, ____, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly adopted or enacted by the Local Government on _____, as supplemented by the supplemental

resolution duly adopted by the Local Government on _____ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Local Government without the consent of the Authority and the DEP.

3. The Local Government is a duly organized and validly existing _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Local Government and constitute valid and binding obligations of the Local Government, enforceable against the Local Government in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Government to the Authority and are valid, legally enforceable and binding special obligations of the Local Government, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net

or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds	$25,877,009
Purchase Price of Local Bonds	$25,877,009

The Local Bonds shall bear interest at a rate of 2% per annum. Commencing December 1, 2013, principal and interest of the Local Bonds is payable quarterly, with an administrative fee of 1%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Local Bonds are fully registered in the name of the Authority as to principal and interest, if any, and the Local Bonds shall grant the Authority a first lien on the net or gross revenues of the Local Government's system as provided in the Local Act.

The Local Government may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Government:

(i) City of Charleston Sewer Revenue Bonds, Series 1989 A, dated March 21, 1989, issued in the aggregate principal amount of $1,912,194 (the "Series 1989 A Bonds");

(ii) City of Charleston Sewer Revenue Bonds, Series 1989 C, dated November 21, 1989, issued in the aggregate original amount of $829,856 (the "Series 1989 C Bonds");

(iii) City of Charleston Sewerage System Revenue Bonds, 1993 Series A, dated December 2, 1993, issued in the aggregate original amount of $773,237 (the "Series 1993 A Bonds");

(iv) City of Charleston Sewerage System Revenue Bonds, Series 1996 A, dated October 9, 1996, issued in the aggregate original amount of $2,671,058 (the "Series 1996 A Bonds");

(v) City of Charleston Sewerage System Revenue Bonds, Series 1996 B, dated November 26, 1996, issued in the aggregate original amount of $395,299 (the "Series 1996 B Bonds");

(vii) City of Charleston Sewerage System Revenue Bonds, Series 1997 A, dated July 22, 1997, issued in the aggregate original amount of $732,688 (the "Series 1997 A Bonds");

(vii) City of Charleston Sewerage System Revenue Bonds, Series 1997 B, dated October 7, 1997, issued in the aggregate original amount of $5,237,584 (the "Series 1997 B Bonds");

(viii) City of Charleston Sewerage System Revenue Bonds, 1998 Series A, dated December 10, 1998, issued in the aggregate original amount of $994,537 (the "Series 1998 A Bonds");

(ix) City of Charleston Sewerage System Revenue Bonds, 1999 Series A, dated June 22, 1999, issued in the aggregate original amount of $686,229 (the "Series 1999 A Bonds");

(x) City of Charleston Sewerage System Revenue Bonds, Series 2001 A, dated February 22, 2001, issued in the aggregate original amount of $1,111,357 (the "Series 2001 A Bonds");

(xi) City of Charleston Sewerage System Revenue Bonds, 2001 Series B, dated May 22, 2001, issued in the aggregate original amount of $823,741 (the "Series 2001 B Bonds");

(xii) City of Charleston Sewerage System Refunding Revenue Bonds, Series 2002 A, dated December 1, 2002, issued in the aggregate original amount of $1,755,000 (the "Series 2002 A Bonds");

(xiii) City of Charleston Sewerage System Refunding Revenue Bonds, Series 2002 B, dated December 1, 2002, issued in the aggregate original amount of $5,160,000 (the "Series 2002 B Bonds");

(xiv) City of Charleston Sewerage System Revenue Bonds, Series 2004 A, dated March 23, 2004, issued in the aggregate original amount of $9,835,120 (the "Series 2004 A Bonds");

(xv) City of Charleston Sewerage System Revenue Bonds, Series 2005 A, dated May 5, 2005, issued in the aggregate original amount of $36,617,310 (the "Series 2005 A Bonds");

(xvi) City of Charleston Sewerage System Revenue Bonds, Series 2008 A, dated June 26, 2008, issued in the aggregate original amount of $9,000,000 (the "Series 2008 A Bonds");

The Bonds are senior and prior to the following obligations:

(xvii) City of Charleston Supplemental Sewer Revenue Bonds, Series 1989 B, dated March 21, 1989, issued in the aggregate original amount of $283,458 (the "Series 1989 B Bonds");

(xviii) City of Charleston Supplemental Sewer Revenue Bonds, Series 1989 D, dated November 21, 1989, issued in the aggregate original amount of $123,015 (the "Series 1989 D Bonds");

(xviii) City of Charleston Sewerage System Revenue Bonds, 1999 Series B, dated June 22, 1999, issued in the aggregate original amount of $132,072 (the "Series 1999 B Bonds");

(xx) City of Charleston Sewerage System Revenue Bonds, 2001 Series C, dated May 22, 2001, issued in the aggregate original amount of $30,492 (the "Series 2001 C Bonds");

(xxi) City of Charleston Sewerage System Revenue Bonds, Series 2005 B-1, dated May 5, 2005, issued in the aggregate original amount of $1,822,690 (the "Series 2005 B-1 Bonds"); and

(xxii) City of Charleston Sewerage System Revenue Bonds, Series 2005 B-2, dated May 5, 2005, issued in the aggregate original amount of $334,771 (the "Series 2005 B-2 Bonds").

The Series 1989 A Bonds, the Series 1989 C Bonds, the Series 1993 A Bonds, the Series 1996 A Bonds, the Series 1996 B Bonds, the Series 1997 A Bonds, the Series 1997 B Bonds, the Series 1998 A Bonds, the Series 1999 A Bonds, the Series 2001 A Bonds, the Series 2001 B Bonds, the Series 2002 A Bonds, the Series 2002 B Bonds, the Series 2004 A Bonds, the Series 2005 A Bonds and the Series 2008 A Bonds are collectively referred to as the "First Lien Bonds." The Series 1989 B Bonds, the Series 1989 D Bonds, the Series 1999 B Bonds, the Series 2001 C Bonds, the Series 2005 B-1 Bonds and the Series 2005 B-2 Bonds are collectively referred to as the "Second Lien Bonds," which are subordinate and junior to the First Lien Bonds and the Bonds. The First Lien Bonds and the Second Lien Bonds are collectively referred to as the "Prior Bonds."

Number of New Customers: 0
Location: N/A

SCHEDULE Y
DEBT SERVICE SCHEDULE

BOND DEBT SERVICE
Charleston Sanitary Board
CW SRF
2% Interest Rate
1% Administrative Fee, 20 years

Dated Date		12/13/2011	
Delivery Date		12/13/2011	

Period Ending	Principal	Coupon	Interest	Debt Service
12/1/2013	263,869	2.000%	129,385.05	393,254.05
3/1/2014	265,188	2.000%	128,065.70	393,253.70
6/1/2014	266,514	2.000%	126,739.76	393,253.76
9/1/2014	267,847	2.000%	125,407.19	393,254.19
12/1/2014	269,186	2.000%	124,067.96	393,253.96
3/1/2015	270,532	2.000%	122,722.03	393,254.03
6/1/2015	271,884	2.000%	121,369.37	393,253.37
9/1/2015	273,244	2.000%	120,009.95	393,253.95
12/1/2015	274,610	2.000%	118,643.73	393,253.73
3/1/2016	275,983	2.000%	117,270.68	393,253.68
6/1/2016	277,363	2.000%	115,890.76	393,253.76
9/1/2016	278,750	2.000%	114,503.95	393,253.95
12/1/2016	280,144	2.000%	113,110.20	393,254.20
3/1/2017	281,544	2.000%	111,709.48	393,253.48
6/1/2017	282,952	2.000%	110,301.76	393,253.76
9/1/2017	284,367	2.000%	108,887.00	393,254.00
12/1/2017	285,789	2.000%	107,465.16	393,254.16
3/1/2018	287,218	2.000%	106,036.22	393,254.22
6/1/2018	288,654	2.000%	104,600.13	393,254.13
9/1/2018	290,097	2.000%	103,156.86	393,253.86
12/1/2018	291,547	2.000%	101,706.37	393,253.37
3/1/2019	293,005	2.000%	100,248.64	393,253.64
6/1/2019	294,470	2.000%	98,783.61	393,253.61
9/1/2019	295,943	2.000%	97,311.26	393,254.26
12/1/2019	297,422	2.000%	95,831.55	393,253.55
3/1/2020	298,909	2.000%	94,344.44	393,253.44
6/1/2020	300,404	2.000%	92,849.89	393,253.89
9/1/2020	301,906	2.000%	91,347.87	393,253.87
12/1/2020	303,415	2.000%	89,838.34	393,253.34
3/1/2021	304,933	2.000%	88,321.27	393,254.27
6/1/2021	306,457	2.000%	86,796.60	393,253.60
9/1/2021	307,990	2.000%	85,264.32	393,254.32
12/1/2021	309,529	2.000%	83,724.37	393,253.37
3/1/2022	311,077	2.000%	82,176.72	393,253.72
6/1/2022	312,632	2.000%	80,621.34	393,253.34
9/1/2022	314,196	2.000%	79,058.18	393,254.18
12/1/2022	315,767	2.000%	77,487.20	393,254.20

BOND DEBT SERVICE

Charleston Sanitary Board

CWSRF

13-Dec-11

Period Ending	Principal	Coupon	Interest	Debt Service	
3/1/2023	317,345	2.000%	75,908.36	393,253.36	
6/1/2023	318,932	2.000%	74,321.64	393,253.64	
9/1/2023	320,527	2.000%	72,726.98	393,253.98	
12/1/2023	322,129	2.000%	71,124.34	393,253.34	
3/1/2024	323,740	2.000%	69,513.70	393,253.70	
6/1/2024	325,359	2.000%	67,895.00	393,254.00	
9/1/2024	326,986	2.000%	66,268.20	393,254.20	
12/1/2024	328,621	2.000%	64,633.27	393,254.27	
3/1/2025	330,264	2.000%	62,990.17	393,254.17	
6/1/2025	331,915	2.000%	61,338.85	393,253.85	
9/1/2025	333,575	2.000%	59,679.27	393,254.27	
12/1/2025	335,242	2.000%	58,011.40	393,253.40	
3/1/2026	336,919	2.000%	56,335.19	393,254.19	
6/1/2026	338,603	2.000%	54,650.59	393,253.59	
9/1/2026	340,296	2.000%	52,957.58	393,253.58	
12/1/2026	341,998	2.000%	51,256.10	393,254.10	
3/1/2027	343,708	2.000%	49,546.11	393,254.11	
6/1/2027	345,426	2.000%	47,827.57	393,253.57	
9/1/2027	347,153	2.000%	46,100.44	393,253.44	
12/1/2027	348,889	2.000%	44,364.67	393,253.67	
3/1/2028	350,634	2.000%	42,620.23	393,254.23	
6/1/2028	352,387	2.000%	40,867.06	393,254.06	
9/1/2028	354,149	2.000%	39,105.12	393,254.12	
12/1/2028	355,919	2.000%	37,334.38	393,253.38	
3/1/2029	357,699	2.000%	35,554.78	393,253.78	
6/1/2029	359,488	2.000%	33,766.29	393,254.29	
9/1/2029	361,285	2.000%	31,968.85	393,253.85	
12/1/2029	363,091	2.000%	30,162.42	393,253.42	
3/1/2030	364,907	2.000%	28,346.97	393,253.97	
6/1/2030	366,731	2.000%	26,522.43	393,253.43	
9/1/2030	368,565	2.000%	24,688.78	393,253.78	
12/1/2030	370,408	2.000%	22,845.95	393,253.95	
3/1/2031	372,260	2.000%	20,993.91	393,253.91	
6/1/2031	374,121	2.000%	19,132.61	393,253.61	
9/1/2031	375,992	2.000%	17,262.01	393,254.01	
12/1/2031	377,872	2.000%	15,382.05	393,254.05	
3/1/2032	379,761	2.000%	13,492.69	393,253.69	
6/1/2032	381,660	2.000%	11,593.88	393,253.88	
9/1/2032	383,568	2.000%	9,685.58	393,253.58	
12/1/2032	385,486	2.000%	7,767.74	393,253.74	
3/1/2033	387,414	2.000%	5,840.31	393,254.31	
6/1/2033	389,351	2.000%	3,903.24	393,254.24	
9/1/2033	391,297	2.000%	1,956.49	393,253.49	
	25,877,009		5,583,298.11	31,460,307.11	*

*Plus a Quarterly Administrative fee of $34,895.62 for a total administrative expense of

$2,791,649.60

P.S.C. W. Va. No. 19
Canceling P.S.C. W. Va. No. 18

(C) THE SANITARY BOARD OF THE CITY OF CHARLESTON,
a municipal corporation

OF

CHARLESTON, WEST VIRGINIA

RATES, RULES AND REGULATIONS FOR FURNISHING

SEWERAGE AND SEWAGE DISPOSAL SERVICE

at Charleston, Kanawha County and vicinity, West Virginia

Filed with **THE PUBLIC SERVICE COMMISSION**
of
WEST VIRGINIA

Issued April 25, 2008 Effective for service rendered on or after April 4, 2008

Adopted by City Council
February 19, 2008

(C) Issued by The Sanitary Board of the City of Charleston,
a municipal corporation

By _____
Danny Jones

RULES AND REGULATIONS

I. Rules and Regulations for the Government of Sewerage Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

II. On all premises having a private water supply and connected with the sewer system and works there shall be installed a meter for measuring the amount of water supplied said premises.

III. If for any reason there be no record of the amount of water supplied any month, then the charge shall be based upon the last available monthly meter reading.

IV. Users, the nature and character of whose use is such that the amount of water discharged into the said system is deemed by the Sanitary Board to be substantially less than the amount of metered water supplied the premises, shall be charged for sewer service substantially on the basis of the amount of water discharged into the sewer system, as may be determined according to formulae approved by the Sanitary Board.

V. In apartment buildings, mobile home courts, shopping centers and other places where more than one occupancy unit is served with water through one water meter, the customer shall be required to pay not less than the minimum monthly charge provided in the tariff for each occupancy.

(I) RATES - For Sewage that does not contain industrial waste:
$8.97 per thousand gallons in excess of 2,000 gallons used per month.

(I) RATES - For Sewage that contains industrial waste:
Where the character of sewage from any manufacturing or industrial plant, building or premises is such that it imposes a burden upon the sewer system in addition to the burden imposed by the average sewage entering the sewer system, the sanitary board may, if it deems advisable to do so, compel the owner, tenant or occupant of such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the Sanitary Board before discharging into the sewer system. In the absence of such treatment sufficient to remove such additional burden, the charges for treatment of such sewage shall be as follows:

Monthly Service Charge	$7,455.73	
Volumetric Treatment Charge	$	4.07 per thousand gallons
Biochemical Oxygen Demand (BOD) Charge	$	0.42 per pound
Total Suspended Solids (TSS) Charge	$	0.33 per pound

When an industrial user is to be served, a preliminary study of its waste, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgment of the Sanitary Board, should not be introduced into the sewer system, need not be handled by it. The results of this preliminary study will be used to determine the feasibility of the proposed sewer service.

(I) MINIMUM CHARGE
A charge of $16.38 shall be the minimum for each month or fraction thereof. If, for any reason, there be no record of the amount of water supplied in any month, then the charge shall be based upon the last available monthly meter reading.

RECOVERY OF BANK CHARGES
If a bank or other financial institution returns a customer's check to the Sanitary Board and charges a fee to the Sanitary Board for such service, the fee charged will be added to the account of the customer whose check is returned.

(I) Indicates increase

PRETREATMENT CHARGE

In addition to all other charges contained herein, all customers who operate under a pretreatment permit will pay an annual charge of $2500.00, payable on July 1 of each year.

DISCONNECT, LIEN, AND RECONNECT FEES

If the Sanitary Board gives notice to a provider of water service to disconnect water service to a customer of the Sanitary Board, the following charges will be added to the account of such customer:

a. A charge equal to that imposed upon the Sanitary Board by the water service provider, plus any legally required certified mail charge, will be added to such customer's account at the time notice to disconnect is given to the water provider.

b. A charge equal to the filing fee to cover the cost of placing a lien on the property served will be added to the account of such customer at the time such lien is filed in the Office of the Clerk of the County Commission of the County where the property served is located.

c. A reconnect charge equal to that imposed upon the Sanitary Board by the water service provider will be made at the time the customer pays the amounts due on such customer's account and requests the reconnection of water and sewer service.

NEW SERVICE FEE

A new service fee equal to the greater of $250.00 or the Sanitary Board's actual cost of making the connection shall be paid before sewer service can be obtained at any location not previously connected to the collection system of a sewer utility.

DELAYED PAYMENT PENALTY

On all current usage billings not paid in full by the latest pay date, which shall be no sooner than the 20th day following the date the Sanitary Board mails the bill, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

(I) GREASE TRAP CHARGE

In addition to all other charges contained herein, all customers who are required by the Sanitary Board to install a grease trap shall pay an annual charge of $320.00, payable on July 1 of each year.

SURCHARGES

Customers served from the facilities acquired from the Mt. Tyler Public Service District shall pay, in addition to the foregoing, a monthly surcharge of $2.14 per month until the retirement of bonds issued by said district, as approved by the Public Service Commission of West Virginia in Case No. 98-0215-PSD-S-C.

Customers served from the facilities acquired from the Guthrie Public Service District shall pay, in addition to the foregoing, a monthly surcharge of $1.75 per thousand gallons until the retirement of bonds issued by said district, as approved by the Public Service Commission of West Virginia in Case No. 00-0152-PSD-PC.

CSB THE SANITARY BOARD OF THE CITY OF CHARLESTON WEST VIRGINIA

May 26, 2011

Samme L. Gee
Jackson & Kelly, PLLC
500 Lee Street, Suite 1600
Charleston, WV 25301-3202

Re: Petition re: Kanawha Two Mile Project

Dear Ms. Gee:

Enclosed please find the original, signed Petition pertaining to the Kanawha Two Mile Project.

Very truly yours,

THE SANITARY BOARD OF THE CITY OF CHARLESTON, WV

Teresa Dawson

Teresa Dawson for
William Collison
(304)348-1084, x264

P.O. BOX 1026, CHARLESTON, WV 25324 • 208 26TH STREET, CHARLESTON, WV 25312
TEL (304) 348-1084 • FAX (304) 347-1808

PETITION OF THE SANITARY BOARD
OF
THE CITY OF CHARLESTON, WEST VIRGINIA

TO THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

Pursuant to the provisions of Chapter 16, Article 13, Section 5 of the Code of West Virginia, 1931, as amended, the Sanitary Board (the "Sanitary Board") of The City of Charleston, West Virginia (the "City"), hereby petitions the Council of the City (the "Council") to enact an ordinance (the "Ordinance") which shall:

(a) authorize the acquisition and construction of certain extensions, additions, betterments and improvements to the City's existing sewerage system (the "System") set forth in Exhibit A hereto (the "Kanawha Two Mile Project") and incorporated herein by reference;

(b) authorize the issuance of not to exceed $30,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, in one or more series as may be required, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, the Sanitary Board which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction of the Kanawha Two Mile Project, to fund reserve accounts for such bonds and to pay other costs in connection therewith;

(c) authorize the construction of the Kanawha Two Mile Project; and

(d) contain such other provisions as may be necessary in the premises.

The Sanitary Board respectfully represents to the Council that one of the two persons appointed to the Sanitary Board by the Council is a registered professional engineer.

WITNESS our signatures as of the 7th day of April, 2011.

THE SANITARY BOARD OF THE CITY
OF CHARLESTON, WEST VIRGINIA

By: _____
Mayor of the City and
Ex-Officio Chairman

_____
Member

_____
Engineer-Member

{C2026784.1}

EXHIBIT A

DESCRIPTION OF PROJECT

The Charleston Sanitary Board Kanawha Two Mile Project consists of the following work: replacement and rehabilitation of existing sewers in the Kanawha Two Mile area, which includes Sissonville Dr., Chandler Dr., Sugar Creek Dr., and Scraggs Dr. areas and all necessary appurtenances.

City of Charleston
Office of the City Clerk
P.O. Box 2749
Charleston, WV 25330
(304) 348-8179

I, the undersigned City Clerk of Charleston, do hereby certify that the foregoing is a true, correct and complete copy of Bill No. 7490, enacted by the City Council of the City of Charleston on September 6, 2011.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 8 day of December, 2011.

James M. Reishman
City Clerk

Seal

THE CITY OF CHARLESTON

SEWERAGE SYSTEM
BOND SUPPLEMENTAL ORDINANCE

THE CITY OF CHARLESTON

SEWERAGE SYSTEM
BOND SUPPLEMENTAL ORDINANCE

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Ordinance No. 7490 :

Introduced in Council:

August 15, 2011

Introduced by:

Robert Reishman

Referred to:

Finance Committee

Passed by Council:

September 6, 2011

A Bill supplementing Ordinance No. 4423 passed by the Council of The City of Charleston, West Virginia, on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349 passed by the Council on June 2, 1997, by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, by Ordinance No. 6948 passed by the Council on November 4, 2002, by Ordinance No. 6977 passed by the Council on May 19, 2003, and by Ordinance No. 7132 passed by the Council on March 7, 2005; authorizing the design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of The City of Charleston; authorizing the issuance of not more than $30,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, in one or more series as designated in a supplemental resolution, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to fund reserve accounts for such bonds and to pay other costs in connection therewith; providing for the rights and remedies of and security for the registered owners of such bonds; and adopting other provisions relaated thereto.

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

{C1896952.1}

ARTICLE I

STATUTORY AUTHORITY, DEFINITIONS AND FINDINGS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and other applicable provisions of law, and as a supplement to Ordinance No. 4423 passed by the Council of The City of Charleston (the "Council") on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349, passed by the Council on June 2, 1997, and by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, by Ordinance No. 6948 passed by the Council on November 4, 2002, by Ordinance No. 6977 passed by the Council on May 19, 2003, and by Ordinance No. 7132 passed by the Council on March 7, 2010 (collectively, the "Prior Ordinances").

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

A. The City of Charleston, West Virginia (the "City" or the "Issuer"), now owns a sewerage system (the "System"), both within and without the corporate limits of the City, consisting of a sewage treatment plant or plants and its collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations and ejector stations and all other appurtenances, extensions, improvements and betterments necessary, appropriate, useful, convenient or incidental for the collection, treatment, purification and disposal in a sanitary manner of liquid and solid waste, sewage and industrial waste.

B. In accordance with Section 2 of the Act, the System is under the supervision and control of the Sanitary Board of the City (the "Sanitary Board").

C. The Sanitary Board has presented a petition to the City for the design, acquisition and construction of certain extensions, additions, betterments and improvements to the System (the "Project") as more fully described on Exhibit A, the enactment of this Ordinance and the issuance of the Sewerage System Revenue Bonds (the "Bonds").

D. The estimated maximum cost of design, acquisition and construction of the Project is not to exceed $30,000,000, which will be obtained from the proceeds of the Bonds herein authorized.

E. The acquisition and construction of the System were financed or refinanced with proceeds of certain obligations of the City, which obligations are designated and have lien positions with respect to the Bonds as follows:

	Designation	Lien Position
1.	$1,912,194 Sewer Revenue Bonds, Series 1989 A, dated March 21, 1989 (the "Series 1989 A Bonds").	First Lien
2.	$829,856 Sewer Revenue Bonds, Series 1989 C, dated November 21, 1989 (the "Series 1989 C Bonds").	First Lien
3.	$773,237 Sewerage System Revenue Bonds, 1993 Series A, dated December 2, 1993 (the "Series 1993 A Bonds").	First Lien
4.	$2,671,058 Sewerage System Revenue Bonds, Series 1996 A, dated October 9, 1996 (the "Series 1996 A Bonds").	First Lien
5.	$395,299 Sewerage System Revenue Bonds, Series 1996 B, dated November 26, 1996 (the "Series 1996 B Bonds").	First Lien
6.	$732,688 Sewerage System Revenue Bonds, Series 1997 A, dated July 22, 1997 (the "Series 1997 A Bonds").	First Lien
7.	$5,237,584 Sewerage System Revenue Bonds, Series 1997 B, dated October 7, 1997 (the "Series 1997 B Bonds").	First Lien
8.	$994,537 Sewerage System Revenue Bonds, 1998 Series A, dated December 10, 1998 (the "Series 1998 A Bonds").	First Lien
9.	$686,229 Sewerage System Revenue Bonds, 1999 Series A, dated June 22, 1999 (the "Series 1999 A Bonds").	First Lien

10.	$1,111,357 Sewerage System Revenue Bonds, Series 2001 A, dated February 22, 2001 (the "Series 2001 A Bonds").	First Lien
11.	$823,741 Sewerage System Revenue Bonds, 2001 Series B, dated May 22, 2001 (the "Series 2001 B Bonds").	First Lien
12.	$1,755,000 Sewerage System Refunding Revenue Bonds, Series 2002 A, dated December 1, 2002 (the "Series 2002 A Bonds").	First Lien
13.	$5,160,000 Sewerage System Refunding Revenue Bonds, Series 2002 B, dated December 1, 2002 (the "Series 2002 B Bonds").	First Lien
14.	$9,835,120 Sewerage System Revenue Bonds, Series 2004 A, dated March 23, 2004 (the "Series 2004 A Bonds").	First Lien
15.	$36,617,310 Sewerage System Revenue Bonds, Series 2005 A, dated May 5, 2005 (the "Series 2005 A Bonds").	First Lien
16.	$9,000,000 Sewerage System Revenue Bonds, Series 2008 A, dated June 26, 2008 (the "Series 2008 A Bonds").	First Lien
17.	$283,458 Supplemental Sewer Revenue Bonds, Series 1989 B, dated March 21, 1989 (the "Series 1989 B Bonds").	Second Lien
18.	$123,015 Supplemental Sewer Revenue Bonds, Series 1989 D, dated November 21, 1989 (the "Series 1989 D Bonds").	Second Lien
19.	$132,072 Sewerage System Revenue Bonds, 1999 Series B, dated June 22, 1999 (the "Series 1999 B Bonds").	Second Lien
20.	$30,492 Sewerage System Revenue Bonds, 2001 Series C, dated May 22, 2001 (the "Series 2001 C Bonds").	Second Lien

21. $1,822,690 Sewerage System Revenue Bonds, Second Lien Series 2005 B-1, dated May 5, 2005 (the "Series 2005 B-1 Bonds").

22. $334,771 Sewerage System Revenue Bonds, Second Lien Series 2005 B-2, dated May 5, 2005 (the "Series 2005 B-2 Bonds").

The Series 1989 A Bonds, the Series 1989 C Bonds, the Series 1993 A Bonds, the Series 1996 A Bonds, the Series 1996 B Bonds, the Series 1997 A Bonds, the Series 1997 B Bonds, the Series 1998 A Bonds, the Series 1999 A Bonds, the Series 2001 A Bonds, the Series 2001 B Bonds, the Series 2002 A Bonds, the Series 2002 B Bonds, the Series 2004 A Bonds, the Series 2005 A Bonds and the Series 2008 A Bonds are collectively referred to as the "First Lien Bonds." The Series 1989 B Bonds, the Series 1989 D Bonds, the Series 1999 B Bonds, the Series 2001 C Bonds, the Series 2005 B-1 Bonds and the Series 2005 B-2 Bonds are collectively referred to as the "Second Lien Bonds," which are subordinate and junior to the First Lien Bonds and the Bonds. The First Lien Bonds and the Second Lien Bonds are collectively referred to as the "Prior Bonds."

F. The City derives revenues from the System, and, except for the pledges thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner.

G. It is necessary and essential to design, acquire and construct the Project, generally described on Exhibit A hereto and incorporated herein by reference, in order to preserve the public health, to be financed through the issuance of the Bonds, in the aggregate principal amount not to exceed $30,000,000. The period of usefulness of the System after completion of the Project is not less than 40 years.

H. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of the System will be sufficient to pay all Operating Expenses of the System, the principal of and interest on the Prior Bonds and the Bonds and all funds and accounts and other payments provided for in this Ordinance and the Prior Ordinances.

I. The Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the form set forth in Exhibit B attached hereto and incorporated herein by reference with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the City.

J. All things necessary to make the 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 Bonds, will be timely done and duly performed.

K. The enactment of this Ordinance, and the execution and issuance of the Bonds, subject to the terms thereof, will not result in any breach of, nor constitute a default under, any instrument to which the City is a party or by which it may be bound or affected.

L. The City is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the Net Proceeds of the Bonds are to be used for local government activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City).

M. It is deemed necessary for the City to issue the Bonds in the aggregate principal amount of not more than $30,000,000, to permanently finance the costs of design, acquisition and construction of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; repayment of any interim financing notes; interest on the Bonds prior to and during construction or acquisition and for six months after completion of construction of the Project; engineering and legal expenses; expenses for estimates of cost and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense, any fees or expenses of the Original Purchaser or DEP, commitment fees, discount, initial fees for the service of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds, and such other expenses as may be necessary or incidental to the financing herein authorized, the construction or acquisition of the Project and the placing of the same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the City for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of the indebtedness incurred by the City for such purposes shall be deemed part of the Cost of the Project.

N. It is in the best interests of the City that the Bonds be sold to the Original Purchaser pursuant to the terms and provisions set forth in the Supplemental Resolution.

O. Prior to the issuance of the Bonds, the City shall obtain (i) a certificate from an independent certified public accountant stating that the coverage and parity tests of the First Lien Bonds have been met; and (ii) the written consent of the registered owners of the Prior Bonds to the issuance of the Bonds on a parity with the First Lien Bonds and senior and prior to the Second Lien Bonds. The Bonds shall be issued with a lien on the Net Revenues on a parity with the lien held by the registered

owners of the First Lien Bonds, but the lien of the Bonds shall be senior and superior to the lien of the registered owners of the Second Lien Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the City which are secured by revenues or assets of the System.

P. The City has complied with all requirements of West Virginia law relating to the authorization of the design, acquisition, construction and operation of Project and the System and issuance of the Bonds, or will have so complied prior to the issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity, if required, from the Public Service Commission of West Virginia by final order not subject to appeal or rehearing.

Q. The City will not permit, at any time, any of the proceeds of the Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code.

R. The Project has been approved by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended.

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

Section 1.04. Definitions. Except as provided below, terms used in this Supplemental Ordinance have the meanings set forth in the Prior Ordinances, as supplemented by this Supplemental Ordinance, unless the context expressly requires otherwise.

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

"Authority" shall mean the West Virginia Water Development Authority, which may be one of the original purchasers and Registered Owners of the Bonds on behalf of the SRF Program and the WDA Program, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the City or the Sanitary Board, and shall initially mean Jackson Kelly PLLC, Charleston, West Virginia.

"Bond Insurer" shall mean any entity which shall insure all or any portion of the payment of principal of and interest on the Bonds and which shall be designated as such in the Supplemental Resolution, and in the event no such entity is so designated, all references in this Ordinance to the Bond Insurer shall be null and void and have no force and effect.

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

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

"Bondholder" or "Holder of the Bonds" or "Owner of the Bonds" or "Registered Owner" or any similar term shall mean any person who shall be the Registered Owner of any Outstanding Bond as hereinafter defined.

"Bonds" shall mean the not more than $30,000,000 in aggregate principal amount of Sewerage System Revenue Bonds of the City, authorized by this Ordinance to be issued in one or more series as designated in the Supplemental Resolution.

"Bonds Construction Trust Fund" shall mean the Bonds Construction Trust Fund created by Section 4.01 D hereof.

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

"Closing Date" shall mean the date or dates upon which there is an exchange of the Bonds for all or a portion of the proceeds of the Bonds from the Original Purchaser.

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

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

"Completion Date" shall mean the completion date of the Project as defined in the SRF Regulations.

"Consulting Engineers" shall mean Burgess & Niple, Parkersburg, West Virginia, or any engineer or firm of engineers, licensed by the State, which shall at any time hereafter be retained by the City as Consulting Engineers for the System in accordance with Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended.

"Costs of the Project" shall mean those costs described in Section 1.02(M) hereof to be a part of the cost of the design, acquisition and construction of the Project.

"Council" or "City Council" shall mean the Council of the City.

"DEP" shall mean the West Virginia Department of Environmental Protection or any other agency of the State of West Virginia that succeeds to the function of the DEP.

"Depository Bank" shall mean the bank or banks to be designated as such in the Supplemental Resolution, and its successors and assigns.

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

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

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

"Loan Agreement" shall mean the Loan Agreement by and among the Authority, the DEP and the City, providing for the purchase of all or a part of the Bonds from the City by the Authority, the forms of which are attached as exhibits in the Supplemental Resolution.

"Mayor" shall mean the Mayor of the City.

"Ordinance" shall mean the Prior Ordinances, as previously defined, as supplemented by this Supplemental Ordinance and as further amended or supplemented. Unless the context clearly requires a different meaning, reference to "this Ordinance" in the Prior Ordinances shall mean the Ordinance.

"Original Purchaser" shall mean the Authority which is expected to be the purchaser of the Bonds directly from the City, as determined by a resolution supplemental hereto.

"Outstanding" when used with reference to Bonds, as of any particular date, describes all such Bonds theretofore and thereupon being authenticated and delivered, except (i) any such Bond canceled by the Registrar, at or prior to said date; (ii) any such Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity of any such Bond, shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any such Bond deemed to have been paid as provided in Section 6.13 hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any such Bond registered to the City.

"Paying Agent" shall mean the West Virginia Municipal Bond Commission or other entity designated as such for the Bonds in the Supplemental Resolution.

"Private Business Use" shall mean use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit; provided that, use as a member of the general public shall not be taken into account, all as determined by the Code.

"Project" shall mean the extensions, additions, betterments and improvements to the existing sewerage system of the City described in Exhibit A attached hereto.

"Purchase Price," for the purpose of computation of the Yield of the 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 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 Bonds of each maturity is sold or, if the Bonds are privately placed, the price paid by the first buyer of the 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 Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Bonds.

"Rebate Fund" shall mean the Rebate Fund created by Section 6.11 hereof.

"Redemption Account" shall mean the Redemption Account for the Bonds created by Section 4.03 hereof.

"Redemption Date" shall mean, collectively, the dates fixed for the redemption of the Bonds called for redemption.

"Redemption Price" shall mean, collectively, the prices at which the Bonds may be called for redemption and includes the principal amount of the Bonds to be redeemed, plus the interest and premium, if any, required to be paid to effect such redemption.

"Registrar" shall mean the entity named as such in the Supplemental Resolution.

"Regulations" shall mean the temporary and permanent regulations promulgated under the Code.

"Reserve Account" shall mean, collectively, one or more reserve accounts for the Bonds created by Section 4.03 hereof.

"Reserve Accounts" shall mean, collectively, the respective Reserve Accounts created for the Prior Bonds and the Bonds.

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

"Sinking Fund" shall mean, collectively, one or more Sinking Funds for the Bonds created by Section 4.03 hereof.

"Sinking Funds" shall mean, collectively, the respective Sinking Funds created for the Prior Bonds and the Bonds.

"SRF Program" shall mean the West Virginia Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

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

"State" shall mean the State of West Virginia.

"Supplemental Ordinance" or "this Ordinance" shall mean this ordinance as hereafter amended or supplemented.

"Supplemental Resolution" shall mean any resolution, ordinance or order of the City supplementing or amending this Ordinance and, when preceded by the article

"the", refers specifically to the supplemental resolutions authorizing the sale of one or more series of the Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Bonds and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" shall mean the Net Revenues not required by the Prior Ordinances and this Ordinance, as supplemented and amended, to be set aside and held in, including but not limited to, any sinking funds, reserve accounts and renewal and replacement funds.

"System" shall mean the complete existing sewerage system now owned by the City and managed by the Sanitary Board, consisting of a sewerage treatment and collection system, and shall include any extensions, additions, betterments and improvements thereto, including the Project, hereafter acquired or constructed for the sewerage system from any sources whatsoever, both within and without the City.

"Term Bonds" shall mean the Bonds subject to mandatory sinking fund redemption as described in Section 3.12 hereof.

"WDA Program" shall mean the Authority's loan program, under which the Authority purchases the water development revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of the water development revenue bonds of the Authority.

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

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

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

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

ARTICLE II

AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO SYSTEM

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized and ordered the design, acquisition and construction of the Project at an estimated cost of not to exceed $30,000,000, in accordance with plans and specifications prepared by the Consulting Engineers, approved by the DEP and the City, and on file in the office of the Sanitary Board.

The City has received bids and will enter into contracts for the design, acquisition and construction of the Project which are in an amount and otherwise compatible with the financing plan submitted to the Original Purchaser.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Bonds. For the purposes of capitalizing interest on the Bonds, funding the Reserve Account for the Bonds, paying Costs of the Project not otherwise provided for, paying costs of issuance of the Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the Bonds of the City. The Bonds shall be issued in one or more series as set forth in the Supplemental Resolution, designated as "Sewerage System Revenue Bonds", in an aggregate principal amount of not more than $30,000,000. The Bonds shall be issued in such principal amounts, shall have the series designation, shall be dated as of the date of delivery thereof, shall bear interest at such rate or rates, not exceeding the then legal maximum rate, and shall mature at such times and in such amounts as shall be set forth in the Supplemental Resolution. The repayment of principal, interest and the SRF Administrative Fee, if any, on the Bonds shall be as set forth in the Supplemental Resolution. The Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and as the Council of the City shall prescribe by resolution (or by supplemental or amendatory ordinance of said Council as said Council shall determine) adopted in connection with the sale of such Bonds.

The Bonds shall be payable as to principal at the office of the Paying Agent in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar.

Each series of Bonds shall be issued in fully registered form, in such denominations and shall have such terms as set forth in the Supplemental Resolution. The Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bonds in aggregate principal amount equal to the amount of the Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of the Bonds.

Section 3.02. Execution of Bonds. The Bonds shall be executed in the name of the City by the Mayor and attested by the City Clerk, and the seal of the City shall be affixed thereto or imprinted thereon. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person

who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as, at the actual time of the execution of such Bonds, shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Exhibit B, shall have been duly manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.04. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be, and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive 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 of West Virginia, 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 owner for value.

So long as any of the Bonds remain Outstanding, the City, through the Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

Bonds shall be transferable only upon the books of the Registrar, by the Registered Owner thereof in person or by the Registered Owner's attorney duly authorized in writing, upon surrender thereto, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or the Registered Owner's duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Registrar. For every such exchange or transfer of Bonds, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental

charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the City. The Registrar shall not be obliged to make any such exchange or transfer of Bonds during the 15 days preceding an interest payment date on the Bonds, or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the City may, in its discretion, issue and deliver a new Bond in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Registered Owner's furnishing the City proof of ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur and the Registrar shall authenticate the new Bond. All Bonds so surrendered shall be canceled by the Registrar and held for the account of the City. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. Bonds not to be Indebtedness of the City. The Bonds shall not, in any event, be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided on a parity with the First Lien Bonds but senior and superior to the Second Lien Bonds. No Registered Owner of the Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Bonds or any interest thereon.

Section 3.07. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all the Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System on a parity with the First Lien Bonds but senior and superior to the Second Lien Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and the Prior Bonds and to make the payments into the sinking funds and the

reserve accounts therein and in the Renewal and Replacement Fund established herein or in the Prior Ordinances are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds and the Prior Bonds as the same become due.

Section 3.08. Form of Bonds. The text of the Bonds shall be substantially as set forth in Exhibit B, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

Section 3.09. Sale of Bonds. The Bonds shall be sold pursuant to the terms and conditions of a loan agreement or bond purchase agreement as set forth in a resolution supplemental hereto.

Section 3.10. Bonds are Issued as Parity Bonds. The Bonds are issued as and shall constitute additional Parity Bonds in accordance with the Prior Ordinances. Prior to the issuance of the Bonds, the following must occur:

A. The City must receive the written consent of the Authority for the issuance of parity bonds.

B. The coverage and parity requirements of the Prior Ordinances must be satisfied.

C. Unless waived in writing by the Authority, the City or the Sanitary Board must enter into written contracts for the immediate design, acquisition or construction of the Project not later than simultaneously with the delivery of the Bonds.

D. The Bonds shall not be issued unless all the payments into the respective funds and accounts provided for in the Prior Ordinances on account of the Prior Bonds and any other payments provided for in the Prior Ordinances, shall have been made in full as required to the date of delivery of the Bonds.

Section 3.11. 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 Account for the Bonds in accordance with Section 4.03 hereof 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 Bond Commission may use the moneys in the Redemption Account for the Bonds to purchase Term Bonds at a price less than the par value thereof and accrued interest thereon. The Bond 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 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 3.12. Notice of Redemption. Unless waived by any Registered Owner of the Bonds to be redeemed, official notice of any redemption shall be given by the Registrar on behalf of the City by mailing a copy of an official redemption notice by registered or certified mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Bond Insurer, if any, the Original Purchaser and the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Bond Registrar.

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.

If funds sufficient to redeem all Bonds called for optional redemption have not been deposited with the Paying Agent at the time of mailing any notice of optional redemption, such notice shall also state that such optional redemption is subject to the deposit of such moneys with the Paying Agent on or before the Redemption Date. If such moneys are not so deposited, the Registrar shall notify all Registered Owners of such Bonds called for redemption of such fact.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the City shall default in the payment of the Redemption Price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in

accordance with said notice, such Bonds shall be paid by the Paying Agent at the Redemption Price. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Registered Owner a new Bond or Bonds of the same maturity in the amount of the unredeemed principal of such Bond. All Bonds which have been redeemed shall be canceled and destroyed by the Registrar and shall not be reissued.

Failure to receive such notice or any defect therein or in the mailing thereof shall not affect the validity of proceedings for the redemption of Bonds, and failure to mail or otherwise send such notice shall not affect the validity of proceedings for the redemption of any portion of Bonds for which there was no such failure.

Section 3.13. Persons Treated as Owners. The City, the Registrar, the Paying Agent and any agent of the City, the Registrar or the Paying Agent may treat the person in whose name any Bond is registered as the Registered Owner of such Bond for the purpose of receiving payment of the principal of and interest on such Bond and for all other purposes, whether or not such Bond is overdue.

Section 3.14. [Reserved]

Section 3.15. Delivery of Bonds. The City shall execute and deliver the Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Bonds to the Original Purchaser upon receipt of the documents set forth below:

(A) A request and authorization to the Registrar on behalf of the City, signed by an Authorized Officer, to authenticate and deliver the Bonds to the Original Purchaser;

(B) Copies of this Ordinance and the Supplemental Resolution certified by the City Clerk; and

(C) The unqualified approving opinion of Bond Counsel regarding the Bonds.

ARTICLE IV

APPLICATION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01. Application of Bond Proceeds. From the moneys received from the sale of the Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. All interest accrued on the Bonds from the date thereof to the date of delivery thereof shall be deposited with the Commission in the Sinking Fund and applied to payment of interest on the Bonds on the first interest payment date.

B. From the proceeds of the Bonds, there shall be deposited with the Commission in the Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

C. Next, from the proceeds of the Bonds, there shall be deposited with the Commission in the Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Reserve Account.

D. There is hereby created and established with the Depository Bank a special fund, designated the "Bonds Construction Trust Fund". The remaining moneys derived from the sale of the Bonds shall be deposited by the City in the Bonds Construction Trust Fund. Moneys in the Bonds Construction Trust Fund shall be used solely to pay Costs of the Project and costs of issuance of the Bonds and until so transferred or expended, are hereby pledged as additional security for the Bonds. All costs of issuance shall be paid within 60 days of the Closing Date.

E. After completion of acquisition and construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, the City shall (i) expend any remaining proceeds of the Bonds as provided in the Supplemental Resolution and (ii) file a schedule with the Authority and the DEP, setting forth the actual costs of the Project and sources of funds used therefor.

Section 4.02. Disbursements From the Bond Construction Trust Fund. Except as provided in Section 4.01 hereof, disbursements from the Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Sanitary Board of the following:

A certificate, signed by the general manager of the Sanitary Board and the Consulting Engineers, stating that:

(A) None of the items for which the payment is proposed to be made has formed the basis for any disbursements theretofore made;

(B) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

(C) Each of such costs has been otherwise properly incurred; and

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

Pending such application, moneys in the Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the City.

The City shall expend all proceeds of the Bonds within 3 years of the date of issuance of the Bonds.

Section 4.03. Funds and Accounts; Flow of Funds. The funds and accounts established by the Prior Ordinances are hereby continued. In addition to the funds and accounts established by the Prior Ordinances, there are hereby created at the Commission the Series 2011 A Sinking Fund, the Series 2011 A Reserve Account with respect to the Bonds. Following the monthly payment of Operating Expenses (including the SRF Administrative Fee), the City shall make monthly payments to the Commission for the Prior Bonds as required under the Prior Ordinances. The monthly payments to the Commission for the Bonds shall be as follows:

(1) Simultaneously with the interest payments made pursuant to the Ordinance and the Prior Ordinances with respect to the First Lien Bonds, the City shall also deposit with the Commission in the Series 2011 A Bonds Sinking Fund on the first day of each month, commencing 4 months prior to the first interest payment date of the Bonds, an amount equal to 1/3rd of the amount of interest which will become due on the Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2011 A Bonds Sinking Fund and the next semiannual interest payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(2) Simultaneously with the principal payments made pursuant to the Ordinance and the Prior Ordinances with respect to the First Lien Bonds, the City shall also deposit with the Commission in the Series 2011 A Bonds Sinking Fund on the first day of each month, commencing 4 months prior to the first principal payment date of the Bonds, an amount equal to 1/3rd of the amount of principal which will mature and

become due on the Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2011 A Bonds Sinking Fund and the next annual principal payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next annual principal payment date, the required amount of principal coming due on such date.

(3) Simultaneously with the reserve account payments made pursuant to the Ordinance and the Prior Ordinances with respect to the First Lien Bonds, the City shall also deposit with the Commission in the Series 2011 A Bonds Reserve Account, if not fully funded upon issuance of the Bonds, on the first day of each month, commencing 4 months prior to the first principal payment date of the Bonds, an amount equal to 1/120th of the Series 2011 A Bonds Reserve Requirement, until the amount in the Series 2011 A Bonds Reserve Account equals the Series 2011 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2011 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2011 A Bonds Reserve Requirement.

(4) The City shall next make the interest payments pursuant to the Ordinance and the Prior Ordinances with respect to the Second Lien Bonds.

(5) The City shall next make the principal payments pursuant to the Ordinance and the Prior Ordinances with respect to the Second Lien Bonds.

(6) The City shall next make the reserve account payments made pursuant to the Ordinance and the Prior Ordinances with respect to the Second Lien Bonds.

(7) The City shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the City or of the Depository Bank and shall be invested and reinvested in accordance with the Ordinance. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, or improvements or extensions to the System; provided that, any deficiencies in any Reserve Account, except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof, shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the respective Sinking Funds shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due. Moneys in the respective Reserve Accounts shall be used only for the purposes of paying principal of and interest on the respective series of Bonds as the same shall become due, when other moneys in the respective Sinking Funds are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the respective Reserve Accounts shall be transferred, not less than once each year, to the Bonds Construction Trust Fund prior to completion of the Project and thereafter, to the respective Sinking Funds.

Any withdrawals from the respective Reserve Accounts which result in a reduction in the balance therein to below the applicable reserve requirement shall be subsequently restored from the first Net Revenues available after all required payments to the respective Sinking Funds for payment of debt service on the Bonds have been made in full.

Moneys in the Sinking Funds and the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 4.04 hereof.

If, on any monthly payment date, the revenues are insufficient to place the required amount in any of the funds or accounts as provided herein and in the Prior Ordinances, the deficiency shall be made up in subsequent payments, in addition to the payments which would otherwise be required to be made into the funds and accounts on subsequent payment dates.

Interest, principal or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the First Lien Bonds and the Bonds and thereafter, with respect to the Second Lien Bonds, in accordance with the respective principal amounts then Outstanding.

The City shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payments.

Except as provided above and in the Supplemental Resolution, all sinking fund, reserve account, and renewal and replacement fund payments shall remain as governed by the Prior Ordinances.

The Gross Revenues of the System shall only be used for purposes of the System.

Section 4.04. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and

reinvested by the Commission, the Depository Bank or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the City in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the Prior Ordinances, the need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 4.04.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount. The Commission, the Depository Bank or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss of such liquidation. The Depository Bank or such other bank or national banking association may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the City, at least once each year (or more often if reasonably requested by the City), a summary of such funds, accounts and investment earnings. The City shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.

ARTICLE V

DEFAULT AND REMEDIES

Section 5.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Bonds; or

(2) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Ordinance, any 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 Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Registered Owner of a Bond; or

(3) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 5.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond or any Bond Insurer if the Bonds are insured may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the City to perform its duties under the Act and the Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the City to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Bonds shall be on a parity with those of the Registered Owners of the First Lien Bonds and senior and prior to those of the Registered Owners of the Second Lien Bonds.

Section 5.03. Appointment of Receiver. Any Registered Owner of a Bond or any Bond Insurer if the Bonds are insured may, by proper legal action, compel the performance of the duties of the City under the Ordinance and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to the Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the City, with the power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Ordinance and the Act.

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

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

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the City and for the joint protection and benefit of the City and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or

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

ARTICLE VI

ADDITIONAL COVENANTS OF THE CITY

All the covenants, agreements and provisions of the Prior Ordinances shall remain in full force and effect as long as the Prior Bonds and the Bonds are outstanding and shall apply to the Bonds as if fully set out herein. The following covenants are supplemental and in addition to the covenants set forth in the Prior Ordinances.

Section 6.01. Completion of Project; Permits and Orders. The City shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing enterprise in good condition and in compliance with all federal and state requirements and standards.

The City has obtained all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the West Virginia Infrastructure and Jobs Development Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for the issuance of the Bonds required by state law, with all requisite appeal periods having expired without successful appeal.

Section 6.02. Insurance and Construction Bonds. The City hereby covenants and agrees that so long as the Bonds remain Outstanding, the City will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. The City will require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Original Purchaser. Such insurance shall be made payable to the order of the Registered Owners, the City, the prime contractor and all subcontractors, as their interests may appear. The City will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, to protect the interests of the City, the Registered Owners, the prime contractor and all subcontractors as their interests may appear during construction of the Project in the full insurable value thereof. In time of war, the City shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be disposed of as provided in the Ordinance and otherwise shall be placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and

Replacement Fund. The City will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The City shall carry such other insurance as is required by the Original Purchaser, including but not limited to flood insurance and business interruption insurance, to the extent available at reasonable cost to the City. The City shall verify all such insurance prior to commencement of construction.

The City shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The City shall verify such bonds prior to commencement of construction.

Section 6.03. Issuance of Other Obligations Payable Out of Revenues. In addition to the limitations on the issuance of parity obligations set forth in the Prior Ordinances, no parity obligations payable out of revenues of the System shall be issued after the issuance of the Bonds without the prior written consent of the Registered Owner of the Prior Bonds then Outstanding and without complying with the parity requirements of the Prior Ordinance and the Supplemental Resolution.

Section 6.04. Engineering Services and Operating Personnel. Prior to the issuance of the Bonds, the City shall obtain the certificate of the Consulting Engineers, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the DEP is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and state laws for construction of the Project have been obtained.

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

The Issuer shall serve the additional customers at the location(s) as set forth in Certificate of Engineer. The Issuer shall not reduce the amount of additional customers served by the project without the prior written approval of the Board of the Authority.

Following completion of the Project the Issuer shall certify to the Authority the number of customers added to the System.

Section 6.05. Compliance With Loan Agreement and Law. The City hereby covenants and agrees to perform, satisfy and comply with all terms, conditions and requirements of the Loan Agreement and all applicable laws, rules and regulations issued by the Authority, the DEP or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System. The Issuer shall provide the Council with copies of all documents submitted to the Purchaser and the Authority.

The Issuer shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia.

Section 6.06. Books; Records and Audit. The City shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The City shall permit the Original Purchaser, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The City shall submit to the Original Purchaser such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of any state and federal grants or other sources of financing for the Project.

All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Sanitary Board.

The City will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the System, and any Registered Owner of the Bonds issued pursuant to the Ordinance shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the City relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the City. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books, and along with other

bookkeeping records as prescribed by the City. The City shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the City shall be reported to such agent of the City as the Council shall direct.

The City shall file with the 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 and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Ordinance and the status of all said funds and accounts.

(C) The amount of any bonds, notes or other obligations Outstanding.

The City shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants (and to the extent legally required in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto) and, shall mail upon request, and make available generally, the report of the Independent Accountants, or a summary thereof, to any Registered Owner or Owners of Bonds. The report of said audit shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet its Operating Expenses and debt service and reserve requirements.

Section 6.07. Operating Budget. The Sanitary Board shall annually prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for the operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Original Purchaser within 30 days of the adoption thereof.

Section 6.08. Tax Covenants. The City hereby further covenants and agrees as follows:

A. PUBLIC PURPOSE BONDS. The City shall use the Bond proceeds solely for the Project and as otherwise set forth herein, and the Project will be operated solely for as a public purpose and as local governmental activity of the City.

B. PRIVATE ACTIVITY BOND COVENANT. The City shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the City to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The City will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Bonds.

C. PRIVATE LOAN LIMITATION. The City shall assure that not in excess of the lesser of 5% of the proceeds of the 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.

D. FEDERAL GUARANTEE PROHIBITION. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

E. INFORMATION RETURN. The City shall file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds, and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

F. FURTHER ACTIONS. The City shall take any and all actions that may be required of it (including those deemed necessary by the Authority) so that the interest on the Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those deemed necessary by the Authority) which would adversely affect such exclusion.

Section 6.09. Rebate Covenant. The City is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Bonds are not private activity bonds within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined in the Code) of the Bonds will be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City). The City reasonably expects to expend the proceeds of the Bonds within the time period that would provide an exception from the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the City is in fact subject to such rebate requirements, the City hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates. In the event the City fails to make such rebates as required, the City shall pay any and all penalties

and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of interest on the Bonds.

Section 6.10. Arbitrage. The City covenants that (i) it will not take, or permit or suffer to be taken, any action with respect to the proceeds of the Bonds which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Bonds) so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 6.11. Tax Certificate and Rebate. The City shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Bonds. In addition, the City covenants to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds and fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of the Ordinance.

If it is determined that the City does not qualify for an exception to Section 148 of the Code or the City is otherwise subject to rebate in connection with the Bonds, the City shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the City shall deposit, or cause to be deposited, with the Depository Bank in a separate fund designated the Rebate Fund, such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, if any, and used only for payment of rebatable arbitrage to the United States. The City shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the City to be used for any lawful purpose of the System. The City shall

remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the City shall assure that such payments are made by the City to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the City shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the City. The City may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the City may deem appropriate in order to assure compliance with this Section 6.11. The City shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 6.11 in accordance with the requirements of Section 148(f) of the Code. In the event the City fails to make such rebates as required, the City shall pay the required rebate amount and all interest, penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The City shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto or, if the City qualifies for the small governmental issue exception to rebate or any other exception therefrom, then the City shall submit to the Authority a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Bonds subject to rebate. The City shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as such term "gross proceeds" is defined in the Code).

Section 6.12. Securities Laws Compliance. The City will provide the Original Purchaser, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Original Purchaser may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240). The City will also deliver a continuing disclosure agreement or certificate in form acceptable to the Original Purchaser sufficient to ensure compliance with SEC Rule 15c2-12, as amended from time to time.

Section 6.13. Defeasance of Bonds. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the Registered Owners of the Bonds, the principal thereof, and redemption premium, if applicable, and interest due or to become

due thereon, at the times and in the manner stipulated therein and in this Ordinance, then the pledge of Net Revenues and any other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the Registered Owners shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the 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.

Section 6.14. Rates and Charges. The City has obtained any and all approvals of rates and charges required by state law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate

ordinance of the City duly enacted on February 19, 2008, which rates are incorporated herein by reference as a part hereof.

So long as the Bonds are outstanding, the City covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Ordinance. In the event the schedule of rates, fees and charges initially established for the System in connection with the Bonds shall prove to be insufficient to produce the required sums set forth in this Ordinance, the City hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Ordinance. In any event, subject to any requirements of law, the City shall not reduce the rates or charges for services set forth in the rate ordinance described above.

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

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The City further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, and any services and facilities of the water system, if so owned by the City, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the waterworks facilities are not owned by the City, the City will, to the extent allowed by law, use diligent efforts to enter into a termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 6.15. Contracts. The City shall, simultaneously with the delivery of the Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

ARTICLE VII

REGISTRAR

Section 7.01. Appointment of Registrar. The Registrar for the Bonds shall be appointed pursuant to the Supplemental Resolution. The City is hereby authorized and directed to enter into an agreement with the Registrar, the substantial form of which agreement is to be approved by Supplemental Resolution.

Section 7.02. Responsibilities of Registrar. The recitals of fact in the 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 Bonds by the City. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication and Registration on the 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 above.

Section 7.03. Evidence on Which Registrar May Act. Except as otherwise provided herein, 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 an Authorized Officer of the City, but in its discretion the Registrar may instead accept other evidence of such fact or matter.

Section 7.04. Compensation and Expenses. The City shall pay to the Registrar from time to time reasonable compensation for all services, including the transfer of registration of Bonds, the first exchange of Bonds and the exchange of Bonds in the event of partial redemption, incurred in the performance of its duties hereunder.

Section 7.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in 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 the Registered Owners or effect or aid in any reorganization growing out of the enforcement of the Bonds or this

Ordinance, whether or not any such committee shall represent the Registered Owners of a majority in principal amount of the Bonds Outstanding.

Section 7.06. 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 60 days' written notice to the City. A copy of such notice shall also be mailed to each Registered Owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the City or the Registered Owners, in which event such resignation shall take effect immediately; provided that, in no event shall such resignation take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 7.07. Removal. The Registrar may be removed at any time by the City, the Bond Insurer or the Registered Owners of a majority in principal amount of the Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the City, the Bond Insurer 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. Such removal shall take effect upon the date stated in such instrument; provided that, in no event shall such removal take effect until a successor has been appointed and has accepted its duties as Registrar.

Section 7.08. 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 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. A copy of such notice shall also be mailed to each Registered Owner of a fully registered Bond or a coupon Bond registered as to principal (other than to bearer). Any successor Registrar appointed by the City shall, immediately and without further act, be superseded by a Registrar appointed by such Registered Owners. If in a proper case no appointment of a successor Registrar shall be made within 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 shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 7.09. Transfer of Rights and Property to Successor. Any predecessor Registrar shall pay over, assign and deliver any moneys, books and records held by it to its successor.

Section 7.10. 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 7.08 hereof.

Section 7.11. Adoption of Authentication. In case any of the 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 Bonds so authenticated, and, in case any Bonds shall have been prepared but not authenticated, any successor Registrar may authenticate such Bonds in the name of the predecessor Registrar or in its own name.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Modification or Amendment. Prior to the issuance of the Bonds, this Ordinance may be amended or supplemented in any way by a 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 Bonds, no material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Registered Owners shall be made without the consent in writing of the Registered Owners of the Bonds then Outstanding and to be affected by said modification; provided, however, that no change shall be made in the maturity of any Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the City to pay such principal and interest out of the revenues of the System without the consent of the Registered Owner thereof. No amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above permitted amendments or modifications. Notwithstanding the foregoing, this Ordinance may be amended without the consent of any Registered Owner as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest on the Bonds from gross income of the Registered Owners thereof.

Section 8.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Bonds.

Section 8.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, other than the Prior Ordinances, in conflict with this Ordinance are, to the extent of such conflict, repealed.

Section 8.04. Covenant of Due Procedure. The City covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Clerk and members of Council and the Sanitary Board were at all times when any actions in

connection with this Ordinance occurred, and are, duly in office and duly qualified for such office.

Section 8.05. Statutory Notice and Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit C attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least 6 full days intervening between each publication, in the Charleston Gazette and Charleston Daily Mail, 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 Bonds, and that any person interested may appear before the Council upon a certain date, not less than 10 days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the City for review by interested persons during office hours of the City. The Council hereby determines that the abstract contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Section 8.06. Effective Date. This Ordinance shall take effect immediately following public hearing and final reading hereof.

EXHIBIT A

DESCRIPTION OF PROJECT

The design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City, including but not limited to the replacement and rehabilitation of existing sewers in the Kanawha Two Mile area (which includes Sissonville Dr., Chandler Dr., Sugar Creek Dr., and Scraggs Dr. areas) and all necessary appurtenances; provided, that to the extent that funds remain available extensions, additions, betterments and improvements to the remaining portion of the existing sewer system.

EXHIBIT B

FORM OF BOND

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF KANAWHA
THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A

No. AR-1 $_____

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation and political subdivision of the State of West Virginia, in Kanawha County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority "), or registered assigns, the sum of _____ DOLLARS ($_____), or such lesser amount as shall have been advanced to the City hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 20__, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference, with interest on each installment at the rate of _____ percent (_____%) per annum as set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Ordinance) on this Bond shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 20__, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the Paying Agent(as defined in the hereinafter described Ordinance). The interest on this Bond is payable by check or draft mailed to the registered owner hereof at the address as

it appears on the books of the Registrar (as defined in the hereinafter described Ordinance) on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable so long as the Authority is registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP") and as otherwise provided by the Loan Agreement dated _____, among the Authority, the DEP and the City.

This Bond is issued (i) to pay the costs of design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City (the "Project"); (ii) to fund a reserve account for this Bond; and (iii) to pay certain costs of issuance hereof and related costs. The existing sewerage system of the City, the Project and any further additions, betterments and improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), Ordinance No. 4423 passed by the City on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the City on November 6, 1989, Ordinance No.4954 passed by the City on May 3, 1993, Ordinance No. 6276 passed by the City on September 3, 1996, Ordinance No. 6349 passed by the City on June 2, 1997, Ordinance No. 6532 passed by the City on November 16, 1998, Ordinance No. 6544 passed by the City on February 1, 1999, Ordinance No. 6670 passed by the City on February 5, 2001,Ordinance No. 6777 passed by the City on March 19, 2001, Ordinance No. 6948 passed by the City on November 4, 2002, Ordinance No. 6977 passed by the City on May 19, 2003, Ordinance No. 7132 passed by the City on March 21, 2005, and a Supplemental Resolution adopted by the City on _____ (collectively, the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance. All undefined capitalized terms used herein shall have the same meaning as set forth in the Ordinance.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT WITH THE FIRST LIEN BONDS AND SENIOR TO THE SECOND LIEN BONDS, ALL AS DEFINED IN THE ORDINANCE.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues as defined in the Ordinance, to be derived from the operation of the System, on a parity with the First Lien Bonds and senior to the Second Lien Bonds,

moneys in the Reserve Account created under the Ordinance (the "Series 2011 A Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 2011 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on this Bond and all obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2011 A Bonds Reserve Account an amount equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year and in the respective reserve accounts established for any obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar, kept for that purpose at the office of the Registrar, by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the

issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the City for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, THE CITY OF CHARLESTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated _____.

[SEAL]

_____
Mayor

ATTEST:

_____
City Clerk

{C1896952.1}

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2011 A Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____.

_____, as Registrar

By _____
Its Authorized Officer

{C1896952.1}

EXHIBIT A

RECORD OF ADVANCES

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

Total $_____

{C1896952.1}

EXHIBIT B

Assignment

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said City with full power of substitution in the premises.

Dated: _____, ___.

In the presence of:

_____

{C1896952.1}

EXHIBIT C

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 _____, 200_, the Council of The City of Charleston, West Virginia (the "City") adopted an ordinance which, among other things:

1. Authorized the design, acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the City's existing sewerage system (the "System"), the permanent financing of such costs thereof through the issuance of not more than $30,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, in one or more series (the "Bonds").

2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the continuation of the revenue fund and the disposition of the System revenues; provided for the payment of operating expenses of the System and debt service on the Bonds; directed the creation of a sinking fund and a reserve account for the Bonds and continuation of the renewal and replacement fund; and directed the creation of a bond construction trust fund and the disbursement of Bond proceeds.

4. Provided that the Bonds shall not be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the Net Revenues of the System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the registered owners of the Bonds to such Net Revenues; provided certain conditions for the issuance of additional bonds.

5. Provided for insurance coverage on the Project and the System, enforcement of collection of fees, rates or other charges for the System and other covenants in favor of the registered owners; established the events of default and the remedies of the registered owners; and provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The City contemplates the issuance of the Bonds described in, and under the conditions set forth in the Ordinance abstracted above. Any person interested may

appear before the Council of The City of Charleston at a _____ meeting on _____, 200_, at _____p.m., in the Council Chambers, City Hall, Charleston, West Virginia, and present protests and be heard as to whether the above-described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council of City on _____, 200_, is on file with the City Clerk for review by interested persons at the City Hall during regular office hours, to-wit: 8:00 a.m. to 4:00 p.m., Monday through Friday.

/s/_____
City Clerk of The City of Charleston, West Virginia

{C1896952.1}

CERTIFICATE OF TRUTH AND ACCURACY

I, the undersigned, as City Clerk of The City of Charleston, Kanawha County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of the official record of The City of Charleston, such records being in the custody of the undersigned and maintained at The City of Charleston, City Hall, Charleston, Kanawha County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended.

Dated this _____ day of _____, 20__.

_____
City Clerk

[SEAL]

City of Charleston
Office of the City Clerk
P.O. Box 2749
Charleston, WV 25330
(304) 348-8179

I, the undersigned City Clerk of Charleston, do hereby certify that the foregoing is a true, correct and complete copy of Resolution No. 058-11, enacted by the City Council of the City of Charleston on December 5, 2011.

Witness the signature of the undersigned City Clerk of the City of Charleston, West Virginia, and the seal of the City, this 8 day of December, 20111.

James M. Reishman
City Clerk

Seal

Resolution No. 058-11:

Introduced in Council: **Adopted by Council:**

December 5, 2011 ~~December 5, 2011~~

Introduced by: **Referred to:**

Robert S. Reishman

A resolution supplementing Ordinance No. 7490, passed by the Council of The City of Charleston, West Virginia, on September 6, 2011, which supplemented Ordinance No. 4423 passed by the Council on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349 passed by the Council on June 2, 1997, by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, by Ordinance No. 6948 passed by the Council on November 4, 2002; by Ordinance No. 6977 passed by the Council on May 19, 2003, and by Ordinance No. 7132, passed by the Council on March 7, 2005; authorizing the issuance of $25,877,009 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2011 A, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of The City of Charleston, to fund a reserve account for such bonds and to pay other costs in connection therewith; providing for the rights and remedies of and security for the registered owners of such bonds; and adopting other provisions related thereto.

WHEREAS, the Council (the "Council") of The City of Charleston, West Virginia (the "City"), on September 6, 2011, adopted Ordinance No. 7490, which became effective following a public hearing on September 19, 2011 (the "Ordinance"), authorizing the issuance of The City of Charleston Sewerage System Revenue Bonds, in an aggregate principal amount not to exceed $30,000,000, in one or more series, to permanently finance the cost of design, acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage system of the City (the "Project");

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Ordinance when used herein;

WHEREAS, pursuant to the Ordinance, the Council desires to issue its Sewerage System Revenue Bonds, Series 2011 A (the "Bonds") in an aggregate principal amount of $25,877,009, to permanently finance the costs of the Project to fund a reserve account, and to pay the costs of issuance of the Bonds;

WHEREAS, the Ordinance provides for the issuance of the Bonds, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and further provides that the exact principal amount, series designation, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of and matters relating to, the Bonds should be established by a supplemental resolution;

WHEREAS, the Bonds are proposed to be purchased by the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Department of Environmental Protection (the "DEP") pursuant to the West Virginia Clean Water SRF Program pursuant to the terms and conditions set forth under a Loan Agreement by and among the City, the Authority and the DEP (collectively, the "Loan Agreement"); and

WHEREAS, the Council deems it essential and desirable that this resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be entered into by the City, that parameters be established for the exact principal amount, series designation, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA, AS FOLLOWS:

Section 1. It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Bond Ordinance (the "Notice") was duly published in *The Charleston Gazette* and *The Charleston Daily Mail*, 2 qualified newspapers published and of general circulation in the Issuer, with the first publication thereof being not less than 10 days before the day set by the Bond Ordinance and the Notice for the public hearing at which interested persons may appear before the Council and present protests and suggestions and with the last publication thereof being prior to said date set by the Bond Ordinance and the Notice for the public hearing, and a copy of the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Bond Ordinance and the Notice, the Clerk has maintained in his or her office a certified copy of the Bond Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council chambers, City Hall, Charleston, West Virginia, on September 19, 2011, at 7:00 p.m., prevailing time, in accordance with the Bond Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Bond Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Bond Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Issuer; and

(E) The Bond Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Bond Ordinance and this Supplemental Resolution.

Section 2. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the:

There is hereby authorized The City of Charleston Sewerage System Revenue Bonds, Series 2011 A (West Virginia SRF Program) (the "Bonds") in the aggregate principal amount of $25,877,009 which will be initially represented by a single bond, numbered AR-1. The Bonds shall be dated the date of delivery, shall finally mature on September 1, 2033, and shall bear interest at a rate of 2% per annum. The principal and interest on the Bonds shall be payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing December 1, 2013, in the amounts as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Issuer hereby approves and shall pay the SRF Administrative Fee equal to 1% of the principal amount of the Bonds set forth in the Schedule Y attached to the Loan Agreement. The SRF Administrative Fee shall be considered Operating Expenses of the City (Sanitary Board). The Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Bonds.

Section 3. All other provisions relating to the Bonds shall be as provided in the Ordinance. The text of the Bonds shall be in substantially the forms provided in the Ordinance. The execution of the Bonds by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 4. The Loan Agreement for the Bonds by and among the Authority, the City, and the DEP, substantially in the form to be attached hereto as Exhibit A, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved, ratified and directed. The Mayor is authorized to execute and deliver the Loan Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Loan Agreement by the Mayor shall be conclusive evidence of any approval required by this Section, and

authorization of any action required by the Loan Agreement relating to the issuance and sale of the Bonds. The City hereby affirms all covenants and representations made in the Loan Agreement and in the application to the DEP and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon.

Section 5. The City hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), as the Paying Agent for the Bonds.

Section 6. The City hereby appoints and designates United Bank, Inc., Charleston, West Virginia, as the Registrar for the Bonds and the Depository Bank for the Bonds Construction Trust Fund (the "Depository Bank" or "Registrar"). The City hereby appoints JPMorgan Chase Bank, NA, Charleston, West Virginia, as the Depository Bank for the Revenue Fund. The City approves and accepts the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein on behalf of the Issuer, are hereby authorized, directed and approved.

Section 7. The Bonds shall be issued on a parity with the First Lien Bonds with respect to liens, pledge and source of and security for payment and in all respects. The Bonds shall be secured by a first lien on the Net Revenues derived from the System on a parity with the First Lien Bonds but senior and superior to the Second Lien Bonds.

Section 8. Bonds proceeds in the amount of $-0- shall be deposited in the Series 2011 A Bonds Sinking Fund as capitalized interest.

Section 9. Bonds proceeds in the amount of $1,573,017 shall be deposited in the Series 2011 A Bonds Reserve Account.

Section 10. The Council hereby finds and determines (A) that none of the items for which payment is proposed to be made has formed the basis for any disbursement theretofore made; (B) that each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project; (C) that each of such costs has been otherwise properly incurred; and (D) that payment for each of the items proposed is now due and owing. The Council hereby approves, authorizes and directs the payment of the invoices authorized by the Sanitary Board.

Section 11. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents, agreements and certificates required or desirable in connection with the Bonds. The City hereby approves and accepts all contracts or agreements relating to the financing, design, acquisition and construction of the Project and hereby authorizes the Sanitary Board to enter into all contracts or agreements relating to the design, acquisition and construction of the Project. The

Manager of the Sanitary Board is hereby authorized to execute all pay requests under the Bonds.

Section 12. The design, acquisition and construction of the Project and the financing thereof with proceeds of the Bonds are in the public interest, serve a public purpose of the City and will promote the health, welfare and safety of the residents of the City.

Section 13. The City hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Depository Bank until expended, in Money Market accounts secured by a pledge of Government Obligations, and therefore, the City hereby directs the Depository Bank to invest all moneys in such Money Market accounts until further directed in writing by the Issuer. Moneys in the Series 2011 A Bonds Sinking Fund and the Series 2011 A Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 14. The City hereby approves the cost of issuance and authorizes the payment of the same.

Section 15. This Supplemental Resolution shall take effect immediately upon adoption hereof.

EXHIBIT A

Loan Agreement

CERTIFICATE OF TRUTH AND ACCURACY

I, the undersigned, as City Clerk of The City of Charleston, Kanawha County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of an official record of The City of Charleston, such records being in the custody of the undersigned and maintained at The City of Charleston, City Hall, Charleston, Kanawha County, West Virginia, and that the action taken by the Council in the foregoing document remains in full force and effect and has not been amended or repealed.

Dated this 5th day of December, 2011.

City Clerk

[SEAL]

SRF-LP-1
(10/11)

LOAN AGREEMENT

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

THE CITY OF CHARLESTON (2009S-1162/C-544272)
(Local Government)

W I T N E S S E T H:

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

The Project and the System

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

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Local Government has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Local Government by the Consulting Engineers.

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

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

rights of the Authority and DEP with respect to the System pursuant to the pertinent provisions of the Act.

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

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

2.7 The Local Government shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Local Government, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local

Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

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

2.10 The Local Government shall require the Consulting Engineers to submit the final or updated Operation and Maintenance Manual, if necessary as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ a state certified plant operator prior to the Project being 50% complete and notify the DEP of such employment. The Local Government shall retain the operator(s) to operate the System during the entire term of this Loan Agreement.

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

2.12 The Local Government, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward a copy by the 20th of each month to DEP and the Authority.

2.13 The Local Government shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia (the "PSC").

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

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

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

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

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

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

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

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

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

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

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

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

(j) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority and DEP shall have received a certificate of the Consulting Engineers, or such

other person or firm experienced in the financing of wastewater treatment projects and satisfactory to the Authority and DEP, to such effect, such certificate to be in form and substance satisfactory to the Authority and DEP, and evidence satisfactory to the Authority and DEP of such irrevocably committed grants.

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

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

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, DEP and the Local Government. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing."

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

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

ARTICLE IV

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

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

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

(i) to pay Operating Expenses of the System;

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

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

improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

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

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

(b) Covenants substantially as follows:

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

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

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

(iv) That, except as otherwise required by State law or the Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the Local Bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Government shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if

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

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

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

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

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

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

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

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

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

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

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

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

(xvii) That the Local Government shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Local Government shall complete the Monthly Payment Form, attached hereto as Exhibit F and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Local Government will furnish to the Authority, annually, at such time as it is required to perform its rebate

calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

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

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

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

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

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

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall

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

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

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

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

ARTICLE V

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

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and

collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

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

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

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

ARTICLE VI

Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by the Local Government in the terms and covenants of this Loan Agreement, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Loan Agreement.

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

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

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

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

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

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

ARTICLE VII

Miscellaneous

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

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

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

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

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

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

7.7 This Loan Agreement shall terminate upon the earlier of:

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

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

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

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

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

THE CITY OF CHARLESTON

(SEAL)

By: _____
Its: Mayor
Date: December 13, 2011

Attest:

_____
Its: City Clerk

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

By: _____
Its: Director
Date: December 13, 2011

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Executive Director
Date: December 13, 2011

Attest:

_____
Its: Authorized Officer

{C2202949.1}

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

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

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

_____
Name of Person Completing Form

_____
Address

_____
Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

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

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

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

Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are $1,200, then $30 (2.5% of $1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.

The Local Government must complete the Monthly Financial Report and forward it to the Water Development Authority by the 20th day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.

EXHIBIT C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

_____
(Issuer)

(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No._____, of _____, Consulting Engineers, _____, _____, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of _____ to the _____ system (the "Project") of _____ (the "Issuer"), to be constructed primarily in _____County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), dated _____.

2. The Bonds are being issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least _____ years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in Schedule A attached hereto as Exhibit

A, and my firm[1] has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof[2], the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

By _____
West Virginia License No.

[SEAL]

---

[1]If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____, Esq.] and delete "my firm has ascertained that".

[2]If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (ix).

EXHIBIT E

SPECIAL CONDITIONS

A. PUBLIC RELEASE REQUIREMENT – The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, ground breaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) – Effective October 1, 2003, the Local Government that receives $500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. ASSET MANAGEMENT – The Local Government shall submit an acceptable asset management plan or where applicable, updated plans, to DEP no later than six months following substantial completion of the Project. This requirement shall be included in the bond closing documents.

D. WAGE RATES – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements.

E. CLOSING REQUIREMENTS – Closing of the Bonds is conditioned upon the receipt of an acceptable final title opinion.

EXHIBIT F

MONTHLY PAYMENT FORM

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:

Interest	$
Principal	$
Total:	$
Reserve Account:	$

Witness my signature this ___ day of_____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

OPINION OF BOND COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated _____, ____, including all schedules and exhibits attached thereto (the "Loan Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, ____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of $_____, in the form of one bond, registered as to principal and interest to the Authority, with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning _____ 1, ____, and ending _____ 1, ____, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) _____, and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly adopted or enacted by the Local Government on _____, as supplemented by the supplemental

resolution duly adopted by the Local Government on _____ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Local Government without the consent of the Authority and the DEP.

3. The Local Government is a duly organized and validly existing _____, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Local Government and constitute valid and binding obligations of the Local Government, enforceable against the Local Government in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Government to the Authority and are valid, legally enforceable and binding special obligations of the Local Government, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net

or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt _____, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds	$25,877,009
Purchase Price of Local Bonds	$25,877,009

The Local Bonds shall bear interest at a rate of 2% per annum. Commencing December 1, 2013, principal and interest of the Local Bonds is payable quarterly, with an administrative fee of 1%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Local Bonds are fully registered in the name of the Authority as to principal and interest, if any, and the Local Bonds shall grant the Authority a first lien on the net or gross revenues of the Local Government's system as provided in the Local Act.

The Local Government may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Government:

(i) City of Charleston Sewer Revenue Bonds, Series 1989 A, dated March 21, 1989, issued in the aggregate principal amount of $1,912,194 (the "Series 1989 A Bonds");

(ii) City of Charleston Sewer Revenue Bonds, Series 1989 C, dated November 21, 1989, issued in the aggregate original amount of $829,856 (the "Series 1989 C Bonds");

(iii) City of Charleston Sewerage System Revenue Bonds, 1993 Series A, dated December 2, 1993, issued in the aggregate original amount of $773,237 (the "Series 1993 A Bonds");

(iv) City of Charleston Sewerage System Revenue Bonds, Series 1996 A, dated October 9, 1996, issued in the aggregate original amount of $2,671,058 (the "Series 1996 A Bonds");

(v) City of Charleston Sewerage System Revenue Bonds, Series 1996 B, dated November 26, 1996, issued in the aggregate original amount of $395,299 (the "Series 1996 B Bonds");

(vii) City of Charleston Sewerage System Revenue Bonds, Series 1997 A, dated July 22, 1997, issued in the aggregate original amount of $732,688 (the "Series 1997 A Bonds");

(vii) City of Charleston Sewerage System Revenue Bonds, Series 1997 B, dated October 7, 1997, issued in the aggregate original amount of $5,237,584 (the "Series 1997 B Bonds");

(viii) City of Charleston Sewerage System Revenue Bonds, 1998 Series A, dated December 10, 1998, issued in the aggregate original amount of $994,537 (the "Series 1998 A Bonds");

(ix) City of Charleston Sewerage System Revenue Bonds, 1999 Series A, dated June 22, 1999, issued in the aggregate original amount of $686,229 (the "Series 1999 A Bonds");

(x) City of Charleston Sewerage System Revenue Bonds, Series 2001 A, dated February 22, 2001, issued in the aggregate original amount of $1,111,357 (the "Series 2001 A Bonds");

(xi) City of Charleston Sewerage System Revenue Bonds, 2001 Series B, dated May 22, 2001, issued in the aggregate original amount of $823,741 (the "Series 2001 B Bonds");

(xii) City of Charleston Sewerage System Refunding Revenue Bonds, Series 2002 A, dated December 1, 2002, issued in the aggregate original amount of $1,755,000 (the "Series 2002 A Bonds");

(xiii) City of Charleston Sewerage System Refunding Revenue Bonds, Series 2002 B, dated December 1, 2002, issued in the aggregate original amount of $5,160,000 (the "Series 2002 B Bonds");

(xiv) City of Charleston Sewerage System Revenue Bonds, Series 2004 A, dated March 23, 2004, issued in the aggregate original amount of $9,835,120 (the "Series 2004 A Bonds");

(xv) City of Charleston Sewerage System Revenue Bonds, Series 2005 A, dated May 5, 2005, issued in the aggregate original amount of $36,617,310 (the "Series 2005 A Bonds");

(xvi) City of Charleston Sewerage System Revenue Bonds, Series 2008 A, dated June 26, 2008, issued in the aggregate original amount of $9,000,000 (the "Series 2008 A Bonds");

The Bonds are senior and prior to the following obligations:

(xvii) City of Charleston Supplemental Sewer Revenue Bonds, Series 1989 B, dated March 21, 1989, issued in the aggregate original amount of $283,458 (the "Series 1989 B Bonds");

(xviii) City of Charleston Supplemental Sewer Revenue Bonds, Series 1989 D, dated November 21, 1989, issued in the aggregate original amount of $123,015 (the "Series 1989 D Bonds");

(xviii) City of Charleston Sewerage System Revenue Bonds, 1999 Series B, dated June 22, 1999, issued in the aggregate original amount of $132,072 (the "Series 1999 B Bonds");

(xx) City of Charleston Sewerage System Revenue Bonds, 2001 Series C, dated May 22, 2001, issued in the aggregate original amount of $30,492 (the "Series 2001 C Bonds");

(xxi) City of Charleston Sewerage System Revenue Bonds, Series 2005 B-1, dated May 5, 2005, issued in the aggregate original amount of $1,822,690 (the "Series 2005 B-1 Bonds"); and

(xxii) City of Charleston Sewerage System Revenue Bonds, Series 2005 B-2, dated May 5, 2005, issued in the aggregate original amount of $334,771 (the "Series 2005 B-2 Bonds").

The Series 1989 A Bonds, the Series 1989 C Bonds, the Series 1993 A Bonds, the Series 1996 A Bonds, the Series 1996 B Bonds, the Series 1997 A Bonds, the Series 1997 B Bonds, the Series 1998 A Bonds, the Series 1999 A Bonds, the Series 2001 A Bonds, the Series 2001 B Bonds, the Series 2002 A Bonds, the Series 2002 B Bonds, the Series 2004 A Bonds, the Series 2005 A Bonds and the Series 2008 A Bonds are collectively referred to as the "First Lien Bonds." The Series 1989 B Bonds, the Series 1989 D Bonds, the Series 1999 B Bonds, the Series 2001 C Bonds, the Series 2005 B-1 Bonds and the Series 2005 B-2 Bonds are collectively referred to as the "Second Lien Bonds," which are subordinate and junior to the First Lien Bonds and the Bonds. The First Lien Bonds and the Second Lien Bonds are collectively referred to as the "Prior Bonds."

Number of New Customers: 0
Location: N/A

SCHEDULE Y
DEBT SERVICE SCHEDULE

BOND DEBT SERVICE
Charleston Sanitary Board
CW SRF
2% Interest Rate
1% Administrative Fee, 20 years

	Dated Date		12/13/2011	
	Delivery Date		12/13/2011	
Period Ending	**Principal**	**Coupon**	**Interest**	**Debt Service**
12/1/2013	263,869	2.000%	129,385.05	393,254.05
3/1/2014	265,188	2.000%	128,065.70	393,253.70
6/1/2014	266,514	2.000%	126,739.76	393,253.76
9/1/2014	267,847	2.000%	125,407.19	393,254.19
12/1/2014	269,186	2.000%	124,067.96	393,253.96
3/1/2015	270,532	2.000%	122,722.03	393,254.03
6/1/2015	271,884	2.000%	121,369.37	393,253.37
9/1/2015	273,244	2.000%	120,009.95	393,253.95
12/1/2015	274,610	2.000%	118,643.73	393,253.73
3/1/2016	275,983	2.000%	117,270.68	393,253.68
6/1/2016	277,363	2.000%	115,890.76	393,253.76
9/1/2016	278,750	2.000%	114,503.95	393,253.95
12/1/2016	280,144	2.000%	113,110.20	393,254.20
3/1/2017	281,544	2.000%	111,709.48	393,253.48
6/1/2017	282,952	2.000%	110,301.76	393,253.76
9/1/2017	284,367	2.000%	108,887.00	393,254.00
12/1/2017	285,789	2.000%	107,465.16	393,254.16
3/1/2018	287,218	2.000%	106,036.22	393,254.22
6/1/2018	288,654	2.000%	104,600.13	393,254.13
9/1/2018	290,097	2.000%	103,156.86	393,253.86
12/1/2018	291,547	2.000%	101,706.37	393,253.37
3/1/2019	293,005	2.000%	100,248.64	393,253.64
6/1/2019	294,470	2.000%	98,783.61	393,253.61
9/1/2019	295,943	2.000%	97,311.26	393,254.26
12/1/2019	297,422	2.000%	95,831.55	393,253.55
3/1/2020	298,909	2.000%	94,344.44	393,253.44
6/1/2020	300,404	2.000%	92,849.89	393,253.89
9/1/2020	301,906	2.000%	91,347.87	393,253.87
12/1/2020	303,415	2.000%	89,838.34	393,253.34
3/1/2021	304,933	2.000%	88,321.27	393,254.27
6/1/2021	306,457	2.000%	86,796.60	393,253.60
9/1/2021	307,990	2.000%	85,264.32	393,254.32
12/1/2021	309,529	2.000%	83,724.37	393,253.37
3/1/2022	311,077	2.000%	82,176.72	393,253.72
6/1/2022	312,632	2.000%	80,621.34	393,253.34
9/1/2022	314,196	2.000%	79,058.18	393,254.18
12/1/2022	315,767	2.000%	77,487.20	393,254.20

BOND DEBT SERVICE

Charleston Sanitary Board

CWSRF

13-Dec-11

Period Ending	Principal	Coupon	Interest	Debt Service
3/1/2023	317,345	2.000%	75,908.36	393,253.36
6/1/2023	318,932	2.000%	74,321.64	393,253.64
9/1/2023	320,527	2.000%	72,726.98	393,253.98
12/1/2023	322,129	2.000%	71,124.34	393,253.34
3/1/2024	323,740	2.000%	69,513.70	393,253.70
6/1/2024	325,359	2.000%	67,895.00	393,254.00
9/1/2024	326,986	2.000%	66,268.20	393,254.20
12/1/2024	328,621	2.000%	64,633.27	393,254.27
3/1/2025	330,264	2.000%	62,990.17	393,254.17
6/1/2025	331,915	2.000%	61,338.85	393,253.85
9/1/2025	333,575	2.000%	59,679.27	393,254.27
12/1/2025	335,242	2.000%	58,011.40	393,253.40
3/1/2026	336,919	2.000%	56,335.19	393,254.19
6/1/2026	338,603	2.000%	54,650.59	393,253.59
9/1/2026	340,296	2.000%	52,957.58	393,253.58
12/1/2026	341,998	2.000%	51,256.10	393,254.10
3/1/2027	343,708	2.000%	49,546.11	393,254.11
6/1/2027	345,426	2.000%	47,827.57	393,253.57
9/1/2027	347,153	2.000%	46,100.44	393,253.44
12/1/2027	348,889	2.000%	44,364.67	393,253.67
3/1/2028	350,634	2.000%	42,620.23	393,254.23
6/1/2028	352,387	2.000%	40,867.06	393,254.06
9/1/2028	354,149	2.000%	39,105.12	393,254.12
12/1/2028	355,919	2.000%	37,334.38	393,253.38
3/1/2029	357,699	2.000%	35,554.78	393,253.78
6/1/2029	359,488	2.000%	33,766.29	393,254.29
9/1/2029	361,285	2.000%	31,968.85	393,253.85
12/1/2029	363,091	2.000%	30,162.42	393,253.42
3/1/2030	364,907	2.000%	28,346.97	393,253.97
6/1/2030	366,731	2.000%	26,522.43	393,253.43
9/1/2030	368,565	2.000%	24,688.78	393,253.78
12/1/2030	370,408	2.000%	22,845.95	393,253.95
3/1/2031	372,260	2.000%	20,993.91	393,253.91
6/1/2031	374,121	2.000%	19,132.61	393,253.61
9/1/2031	375,992	2.000%	17,262.01	393,254.01
12/1/2031	377,872	2.000%	15,382.05	393,254.05
3/1/2032	379,761	2.000%	13,492.69	393,253.69
6/1/2032	381,660	2.000%	11,593.88	393,253.88
9/1/2032	383,568	2.000%	9,685.58	393,253.58
12/1/2032	385,486	2.000%	7,767.74	393,253.74
3/1/2033	387,414	2.000%	5,840.31	393,254.31
6/1/2033	389,351	2.000%	3,903.24	393,254.24
9/1/2033	391,297	2.000%	1,956.49	393,253.49
	25,877,009		5,583,298.11	31,460,307.11 *

*Plus a Quarterly Administrative fee of $34,895.62 for a total administrative expense of $2,791,649.60

JOURNAL

OF THE

COUNCIL

CITY OF CHARLESTON

WEST VIRGINIA

August 15, 2011

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE SECOND MEETING IN THE MONTH OF AUGUST ON THE 15th DAY, IN THE YEAR 2011, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED BY EALY AND THE PLEDGE OF ALLEGIANCE WAS LED BY BURKA.

BURKA	BURTON	
DAVIS	DENEAULT	DODRILL
EALY		HARRISON
KIRK	LANE	MILLER
MINARDI	NICHOLS	PERSINGER
REISHMAN	RICHARDSON	RUSSELL
SALISBURY	SHEETS	SMITH
SNODGRASS	STAJDUHAR	TALKINGTON
WARE	WEINTRAUB	WHITE
MAYOR JONES		

WITH 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.

PUBLIC SPEAKERS
Anthony Kinzer - Crosswalks

CLAIMS

1. A claim of Sally Miller, 408 Abbey Drive, Charleston, WV; alleges damage to vehicle.
Refer to City Solicitor

2. A claim of Freddy Osaba, PO Box 1869, Palmetto, FL; alleges damage to property.
Refer to City Solicitor

3. A claim of Milciades Jimenez, 14500 SW 88 Ave., Apt 119. , Palmetto Bay, FL; alleges damage to property.
Refer to City Solicitor

4. A claim of Myron Boggess II,130 Silkott Fork, Gandeeville, WV; alleges damage to vehicle.
Refer to City Solicitor

5. A claim of Charlene Straughter,1205 Homer St., Charleston, WV; alleges damage to property.
Refer to City Solicitor

6. A claim of Kristy Jarrell, 6411 Price Branch Rd., Danville, WV; alleges damage to vehicle.
Refer to City Solicitor

7. A claim of Shauna Pearson, 119 Emerald Rd., Charleston, WV; alleges damage to vehicle.
Refer to City Solicitor

8. A claim of Anna Price, 1668 Strollings Road, Danville WV; alleges damage to vehicle.
Refer to City Solicitor

9. A claim of Kenneth Sampson, 1421 6th Avenue, Charleston, WV; alleges damage to vehicle.
Refer to City Solicitor

10. A claim of Wanda Hightower, 405 Wertz Ave., Charleston, WV; alleges damage to vehicle.
Refer to City Solicitor

11. A claim of Stephen Summers, 509 Sheridan Circle., Charleston, WV; alleges damage to property.
Refer to City Solicitor

COMMUNICATIONS

The Clerk read the Appointment;

TO: Councilman Jack Harrison
Councilman John Miller
Councilwoman Susie Salisbury
Councilman Ed Talkington
Councilman Bob White

FROM: Danny Jones, Mayor

RE: Select Committee on Cable Television

DATE: August 15, 2011

I am appointing each of you to the select committee on Cable Television. The purpose of this committee is to review and discuss the request to renew the franchise agreement between Cebridge Acquisition, LLC, dba Suddenlink Communications and the City of Charleston.

I would ask that Councilmember Harrison act as the Chairperson in this matter. I would ask that the committee hold the necessary public hearings and speak with the knowledgeable people in this field to provide guidance and assistance with this task.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the appointment confirmed.

TO: JAMES REISHMAN
CITY CLERK

FROM: DANNY JONES
MAYOR

RE: CHARLESTON LAND TRUST

DATE: AUGUST 15, 2011

I recommend that Chris Dodrill, 500 Lee St., E Suite 800, Charleston, WV 25301, be appointed to the Charleston Land Trust, with an initial term to expire October 4, 2013.

I respectfully request City Council's approval of this recommendation.

DJ/dmp

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the appointment confirmed.

The clerk read the communication:

To: Danny Jones, Mayor and
City Council Members

From: Dan Vriendt, Planning Director

Date: August 5, 2011

Subject: Referral to Planning Committee

On August 3, 2011 the Municipal Planning Commission held a public hearing on the following case:

Bill No.7482, a request by Terry Midkiff requesting to amend the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning the whole of that certain parcel of land situate at 2114 Pennsylvania Avenue, Charleston, West Virginia from an R-4 Single Family Residential District to a C-10 General Commercial District.

This case should be referred to Council's Committee on Planning.

The Mayor refered the case to the Planning Committee.

The Clerk read the communication:

Your Committee on Streets and Traffic has had under consideration Bill 7480, relating to the speed limit on 21st Street, West south of 7th Avenue and recommends that the Bill be withdrawn as unnnesessary.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill 7480 withdrawn.

STREETS AND TRAFFIC
Councillperson Joe Deneault, Chairperson 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. 7479, and reports the same to council with the recommendation that the Bill do pass as amended.

Bill No. 7479- A Bill to establish to 25 MPH on 21st Street W., 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 25 Mile Per Hour speed limit on 21st Street W., 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 were; yeas – 26, absent - 2, as follows:
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller,

Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSENT: Clowser, Haas,
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7479, as amended adopted.

2. Your Committee on Streets and Traffic has had under consideration Bill No. 7484, and reports the same to council with the recommendation that the Bill do pass.

Bill No. 7484 : "A BILL to decrease the speed limit on Lee Street between Elizabeth Street and Bradford Street in the east end of Charleston from 30 m.p.h. to 25 m.p.h., and to amend the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, as amended, Chapter 114 - Traffic Ordinance, Article IV, Division 2, to conform herewith.

Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

That the speed limit on Lee Street between Elizabeth Street and Bradford Street in the east end of Charleston is hereby decreased from 30 m.p.h. to 25 m.p.h., and that the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, as amended, Chapter 114 - Traffic Ordinance, Article IV, Division 2, is amended to conform herewith. All prior Ordinances inconsistent with this Ordinance are hereby repealed to the extent of said inconsistency and reenacted to conform herewith.

The question being on the passage of the Bill. A roll call was taken and there were; yeas – 26, absent - 2, as follows:
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSENT: Clowser, Haas,
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7484, adopted.

3. Your Committee on Streets and Traffic has had under consideration Bill No. 7487, and reports the same to council with the recommendation that the Bill do pass.

Bill No. 7487: "A BILL to establish a No Parking Anytime Tow Away Zone on both sides of Francis Drive, Ariel Heights, and Andover Place within the Briarwood Estates subdivision, a map of said streets attached as Exhibit A hereto, and to amend the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, as amended, Chapter 114 - Traffic Ordinance, Article IV, Division 2, to conform herewith.

Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

That a No Parking Anytime Tow Away Zone is hereby established on both sides of Francis Drive, Ariel Heights, and Andover Place within the Briarwood Estates subdivision, a map of said streets attached as Exhibit A hereto,, and that the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, as amended, Chapter 114 - Traffic Ordinance, Article IV, Division 2, shall be amended to conform herewith. All prior Ordinances inconsistent with this Ordinance are hereby repealed to the extent of said

inconsistency and reenacted to conform herewith.

The question being on the passage of the Bill. A roll call was taken and there were; yeas – 26, absent - 2, as follows:
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSENT: Clowser, Haas,
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7487, adopted.

4. Your Committee on Streets and Traffic has had under consideration Bill No. 7488, and reports the same to council with the recommendation that the Bill do pass.

Bill No. 7488: "A BILL to decrease the speed limit on Francis Drive, Ariel Heights, and Andover Place within the Briarwood Estates subdivision, a map of said streets attached as Exhibit A hereto, from 30 m.p.h. to 20 m.p.h., and to amend the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, as amended, Chapter 114 - Traffic Ordinance, Article IV, Division 2, to conform herewith.

Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

That the speed limit on Francis Drive, Ariel Heights, and Andover Place within the Briarwood Estates subdivision, a map of said streets attached as Exhibit A hereto, is hereby decreased from 30 m.p.h. to 20 m.p.h., and that the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, as amended, Chapter 114 - Traffic Ordinance, Article IV, Division 2, shall be amended to conform herewith. All prior Ordinances inconsistent with this Ordinance are hereby repealed to the extent of said inconsistency and reenacted to conform herewith.

The question being on the passage of the Bill. A roll call was taken and there were; yeas – 26, absent - 2, as follows:
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSENT: Clowser, Haas,
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7488, adopted.

4. Your Committee on Streets and Traffic has had under consideration Bill No. 7489, and reports the same to council with the recommendation that the Bill do pass.

Bill No. 7489: "A BILL to create a No Parking 6am to 9pm Except Sundays zone on the easterly side of Court Street from a point 3 feet south of Brawley Walkway to a point 113 feet south of Brawley Walkway and amending the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, as amended, Chapter 114 - Traffic Ordinance, Article IV, Division 2, to conform herewith.

Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

Section 1. A No Parking 6am to 9pm Except Sundays zone on the easterly side of Court

Street from a point 3 feet south of Brawley Walkway to a point 113 feet south of Brawley Walkway 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 were; yeas – 26, absent - 2, as follows:
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSENT: Clowser, Haas,
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7489, adopted.

FINANCE

Councillperson Robert Reishman, Chairperson of the Council Committee on Finance, submitted the following reports.

1. Your Committee on Finance has had under consideration Resolution No 993-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 993-11 : "Authorizing the Mayor to enter into an agreement with Wiseman Construction Company, in the amount of $439,914, for rehabilitation of the Loudon Heights Bridge and South Side Bridge – Pier 'C'."

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 Wiseman Construction Company, in the amount of $439,914, for rehabilitation of the Loudon Heights Bridge and South Side Bridge – Pier 'C'.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 993-11, adopted.

2. Your Committee on Finance has had under consideration Resolution No 994-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 994-11 : "Authorizing the Mayor to enter into an agreement with the West Virginia Division of Justice and Community Services to receive funds in the amount of $19,600 from the U.S. Department of Justice, Enforcing Underage Drinking Program Grant. These funds will be utilized in the Operation Prevent Program to provide the City of Charleston with aggressive, underage drinking enforcement and preventative education from July 1, 2011 to June 30, 2012."

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

That the Mayor is hereby authorized and directed to enter into an agreement with the West Virginia Division of Justice and Community Services to receive funds in the amount of $19,600 from the U.S. Department of Justice, Enforcing Underage Drinking Program Grant. These funds will be utilized in the Operation Prevent Program to provide the City of Charleston with aggressive, underage drinking enforcement and preventative education from July 1, 2011 to June 30, 2012.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 994-11, adopted.

3. Your Committee on Finance has had under consideration Resolution No 995-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 995-11 : "Authorizing the Mayor to receive and administer Justice Assistance Grant funds in the amount of $50,000 from the Division of Justice and Community Services for Prevention Resource Officers (PRO) at Stonewall Jackson Middle School and Capital High School."

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

That the Mayor is hereby authorized and directed to receive and administer Justice Assistance Grant funds in the amount of $50,000 from the Division of Justice and Community Services for Prevention Resource Officers (PRO) at Stonewall Jackson Middle School and Capital High School.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 995-11, adopted.

4. Your Committee on Finance has had under consideration Resolution No 996-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 996-11 : "Authorizing the Mayor and the Chief of Police to execute and enter into an agreement, a copy of which is attached hereto, with the United States Department of Justice, Drug Enforcement Administration ("DEA") for participation in the West Virginia DEA High Intensity Drug Trafficking Areas ("HIDTA") Task Force."

Now, Therefore, Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor and the Chief of Police are hereby authorized to execute and enter into an agreement with the United States Department of Justice, Drug Enforcement Administration ("DEA") for participation in the West Virginia DEA High Intensity Drug Trafficking Areas ("HIDTA") Task Force.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 996-11, adopted.

5. Your Committee on Finance has had under consideration Resolution No 997-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 997-11: "Authorizing the Finance Director to amend the 2011-2012 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 amend the 2011-2012 General Fund budget as indicated on the attached list of accounts.

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas – 26, absent - 2, as follows:
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSENT:, Haas, Clowser
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 997-11 adopted.

6. Your Committee on Finance has had under consideration Bill No. 7481, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 7481: "A Bill authorizing and directing the Mayor to enter in to a Housing Consortium Cooperation Agreement between the City of Charleston, the Kanawha County Commission, the Town of Belle, the Town of Cedar Grove, the Town of Clendenin, the Town of Marmet, the City of Nitro, the Town of Pratt, the City of St. Albans, the City of Dunbar, and the City of South Charleston to renew the Charleston/Kanawha County Housing Consortium for fiscal years 2012, 2013, and 2014."

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

That the Mayor is hereby authorized and directed to enter in to a Housing Consortium Cooperation Agreement between the City of Charleston, the Kanawha County Commission, the Town of Belle, the Town of Cedar Grove, the Town of Clendenin, the Town of Marmet, the City of Nitro, the Town of Pratt, the City of St. Albans, the City of Dunbar, and the City of South Charleston to renew the Charleston/Kanawha County Housing Consortium for fiscal years 2012, 2013, and 2014.

The question being on the passage of the Bill. A roll call was taken and there were; yeas – 26, absent - 2, as follows:
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSENT: Clowser, Haas,
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7481, adopted.

REPORTS OF OFFICERS

1. City Treasurer's Report to City Council Month Ending July 2011.

Received and Filed.

2. Report of the City of Charleston, Municipal Court Financial Statements; July 2011.
Received and Filed.

NEW BILLS

Introduced by Council member Robert Reishman, on August 15, 2011:
Bill No. 7490 A Bill authorizing the design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of The City of Charleston; authorizing the issuance of not more than $30,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, in one or more series as designated in a supplemental resolution, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to fund reserve accounts for such bonds and to pay other costs in connection therewith; providing for the rights and remedies of and security for the registered owners of such bonds; and adopting other provisions related thereto.
Refer to Finance Committee.

Miscellaneous Resolution

Mayor Jones stepped down from the podium to allow Council President to preside over the meeting for the next order of business.
Resolution No. 998-11 - A Resolution adopting the "Final Order of Election Contest" which accurately reflects the findings and conclusions made by Charleston City Council on July 21, 2011, in the matter of Janet L. Thompson's contest of the May 17, 2011, City of Charleston Municipal Election (the "Contest"), and authorizing the execution of said "Final Order of Election Contest" by Tom Lane, the Chairperson duly elected to preside over the hearing of the Contest by the City Council.

WHEREAS, Janet L. Thompson filed a Notice of Election Contest contesting the validity and legality of the May 17, 2011, Municipal General Election;

WHEREAS, the City Council convened on July 18, 2011, and conducted a duly-noticed preliminary hearing for the purpose of addressing preliminary issues, motions and receiving oral arguments on same;

WHEREAS, the City Council convened on July 21, 2011, and conducted a duly-noticed hearing/trial for the purpose of receiving evidence, testimony and arguments of the parties related to the Contest;

WHEREAS, the City Council upon due and careful consideration of all evidence, testimony, motions and pleadings submitted by the parties publicly voted on July 21, 2011, to deny the relief sought by Janet L. Thompson in the Contest;

WHEREAS, West Virginia Code § 3-7-1, *et seq.*, requires the City Council to publicly announce in writing its findings and conclusions related to the Contest;

WHEREAS, Tom Lane was duly-elected by City Council as Chairperson for the purpose of presiding over the Contest proceeding;

WHEREAS, the "Final Order of Election Contest" attached hereto accurately reflects the findings and conclusions related to the Contest;

NOW THEREFORE, Be it Resolved by the Council of the City of Charleston, West Virginia:

That the "Final Order of Election Contest" which accurately reflects the findings and conclusions made by Charleston City Council on July 21, 2011, in the matter of the Contest is hereby adopted, and Tom Lane, the Chairperson duly elected to preside over the hearing of the Contest by the City Council, is hereby authorized to execute said "Final Order of Election Contest."

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas – 22, absent - 3, abstain -3: as follows:
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Minardi, Nichols, Persinger, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Weintraub,White,
ABSENT: Haas, Clowser, Mayor Jones.
ABSTAIN: Miller, Reishman, Ware
With a majority of members elected recorded thereon as voting in the affirmative the Council President declared Resolution No. 998-11 adopted.

ROLL CALL

YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Harrison, Kirk, Lane, Miller, Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White.
ABSENT: Clowser, Haas, Mayor Jones.

At 8:05 p.m., by a motion from Councilmember Harrison, Council adjourned until Tuesday, September 6, 2011, at 7:00 p.m.

_____
Danny Jones, Honorable Mayor

_____
James M. Reishman, City Clerk

JOURNAL

OF THE

COUNCIL

CITY OF CHARLESTON

WEST VIRGINIA

September 6, 2011

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF SEPTEMBER ON THE 6th DAY, IN THE YEAR 2011, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED BY EALY AND THE PLEDGE OF ALLEGIANCE WAS LED BY NICHOLS.

BURKA	BURTON	CLOWSER
DAVIS	DENEAULT	DODRILL
EALY	HAAS	
KIRK	LANE	MILLER
MINARDI	NICHOLS	
REISHMAN	RICHARDSON	
SALISBURY	SHEETS	SMITH
SNODGRASS	STAJDUHAR	TALKINGTON
WARE	WEINTRAUB	WHITE
MAYOR JONES		

WITH TWENTY-FIVE 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.

PUBLIC SPEAKERS

Cheryl Jackson – Tobacco Free Parks
Don Boardwine – Kanawha Animal Shelter

CLAIMS

1. A claim of Tiffany Tyson, 1046 Grant St., Charleston, WV; alleges damage to property.
2. A claim of Denise Conner, 207 Bream St, Charleston, WV; alleges damage to property.
3. A claim of Mary Boner, 1801 Huber Rd, Charleston, WV; alleges damage to vehicle.
4. A claim of Philip Weldon, 904 W 2nd St., Charleston, WV; alleges damage to property.
5. A claim of Darlene Reynolds, 922 Grant Street, Charleston, WV; alleges damage to property.

COMMUNICATIONS

To: James Reishman, City Clerk

From: Mayor Jones

Re: Halloween 2011

Date: September 6, 2011

I recommend that October 31, 2011 from the hours of 6:00 until 8:00 be designated as Trick or Treat in the City of Charleston.

I respectfully request City Council's approval of this recommendation

DJ/dmp

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Trick or Treat Night as October 31, 2011.

EXECUTIVE DEPARTMENT
CITY OF CHARLESTON
PROCLAMATION
By the Mayor

WHEREAS: On the morning of September 11, 2001, terrorists hijacked four airplanes and launched the most deadly and devastating attack on the United States of America, killing approximately 3,000 people among innocent civilians, first responders and military personnel while injuring thousands more; and

WHEREAS: In the midst of tragedy and turmoil of the day, Americans also were witness to incredible heroism among firefighters, police officers, paramedics and other first responders, who jeopardized their own safety by rushing in to help people in the fallen twin towers of the World Trade Center and

the damaged Pentagon, and from civilians on United Flight 93 who sacrificed their lives to prevent a fourth direct hit; and

WHEREAS: Ten years later, the impacts of the September 11 attacks remain with our nation through the thousands of Americans killed and thousands more in harm's way in the ongoing war against terror, through the tens of thousands of people who mourn loved ones that day and through the lingering heath affects on so many who were maimed, scarred and sickened as a direct result of the attacks; and

WHEREAS: The tenth anniversary of the September 11 attack has been designated as a special time for solemn remembrance and service by President Barack Obama and United States Senate Resolution 237, which urges people throughout the nation to pause for a minute of reflection and tribute at 1:00 p.m. EDT on Sunday, September 11, 2011; and

WHEREAS: Elected leaders and first responders from the State of West Virginia, Kanawha County and the City of Charleston are organizing a ceremony at 8:30 a.m. on Sunday, September 11, 2011 in Haddad Riverfront Park to commemorate the tenth anniversary of the attacks that changed our nation; and

WHEREAS: As the U.S. Senate resolution states, "September 11 will never, and should never, be just another day in the hearts and minds of all people of the United States."

NOW THEREFORE, I, Danny Jones, Mayor of the City of Charleston, do hereby proclaim September 11, 2011 as a:

Day of Solemn Remembrance and Tribute

In the City of Charleston and urge all citizens to take time to remember the attacks, honor the lives lost, recognize the heroes among us and pay tribute to all those who work every day to make our city and nation safer. In addition, I encourage people in Charleston to remember the day by participating in the ceremony in Haddad Park at 8:30 a.m., the national moment of reflection at 1:00 p.m. and/or the special concert by the Charleston Metro Band at 4:30 p.m.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Executive Department to be affixed on this 6th day of September 2011.

DANNY JONES, MAYOR

EXECUTIVE DEPARTMENT

CITY OF CHARLESTON

PROCLAMATION

By the Mayor

WHEREAS: For 36 years Bob Scott has been a band director in Kanawha County Schools, including 28 years of leadership of high school musicians; and

WHEREAS: Since 1989, Mr. Scott has provided valuable instruction and dedicated leadership to students at Capital High School, Kanawha County's magnet school for performing arts, where he imparted an enthusiasm for music, demonstrated the value of quality performance and instilled an abiding sense of loyalty among his students; and

WHEREAS: During his tenure at Capital High School, the school's band has taken more than 60 grand championships in competitions throughout the state as well as the top spot in the Charleston Daily Mail's Majorette and Band Festival for 12 years – including seven consecutive championships; and

WHEREAS: His ear for music and mind for education has led to several honors over the years, including 2005-06 West Virginia Bandmaster of the Year, 2006-07 West Virginia Music Educator of the Year and 2007-08 Kanawha County Teacher of the Year; and

WHEREAS: For Veterans Days, Christmas parades and other community celebrations, Mr. Scott has always said, "Yes," when city leaders have asked for participation by Capital High School's marching band to make events in Charleston that much more special; and

WHEREAS: From his time as the Charleston High School Trumpeteer through his long service at two junior high schools and two high schools within Charleston, Bob Scott has been synonymous with quality high school band music in West Virginia's capital city.

NOW THEREFORE, I, Danny Jones, Mayor of the City of Charleston, do hereby proclaim the 6th day of September 2011, as

BOB SCOTT DAY

in Charleston, West Virginia, in honor of his many years of teaching thousands of students, promoting music to all generations and serving with excellence within our city's schools.

IN WITNESS WHEREOF, I have set my hand and caused the Seal of the Executive Department to be affixed this 6th day of September 2011.

DANNY JONES, MAYOR

PLANNING

Councillperson 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. 7482, and reports the same to council with the recommendation that the Bill do pass.

Bill No. 7482 amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning from an R-4 district to a C-10 district, that certain parcel of land situate at 2114 Pennsylvania 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 1st day of January 2006, as amended, is hereby amended by rezoning from an R-4 district to a C-10 district the whole of the following described parcel of land:

Parcel No. 221 as shown on the West Charleston Tax Map No. 30. Subject parcel commonly known as Lots 18-19, Bk D Elk Park Upper Glen Elk (2114 Pennsylvania Avenue), Charleston West Virginia. Said tax map is of record in the Planning Office.

2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is hereby amended in accordance with Article 27 of this ordinance.

3. All prior 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 were; yeas – 25, absent - 3, as follows:
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Haas, Kirk, Lane, Miller, Minardi, Nichols, Reishman, Richardson, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSENT:, Harrison, Persinger, Russell
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7482, passed

FINANCE

Councillperson Robert Reishman, Chairperson of the Council Committee on Finance, submitted the following reports.

1. Your Committee on Finance has had under consideration Resolution No 999-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 999-11 : "Authorizing the Mayor to sign Change Order No. 3 with Michael Baker, Jr., Inc., in the amount of $23,852, to provide for Construction Inspection Services for the Rehabilitation of the South Side Bridge, Pier "C" and Loudon Heights Bridge Project. This change order increases the contract price for Engineering Consulting Services/Phase 2, Bridges, from $341,326 to $365,178."

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. 3 with Michael Baker, Jr., Inc., in the amount of $23,852, to provide for Construction Inspection Services for the Rehabilitation of the South Side Bridge, Pier "C" and Loudon Heights Bridge Project. This change order increases the contract price for Engineering Consulting Services/Phase 2, Bridges, from $341,326 to $365,178

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 999-11, adopted

2. Your Committee on Finance has had under consideration Resolution No 001-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 001-11 : "Authorizing the Mayor to sign Change Order No. 1 with Thaxton Construction Co., Inc., in the amount of $15,050, for the Three Retaining Walls Project (Pacific Street, Stonewall Drive, and Skyline Road), to add soldier piles and lagging to extend the retaining wall at Pacific Street by approximately 20 feet to

accommodate an expansion of the slip area which occurred after the project was advertised for bids. Change Order No. 1 increases the contract from $174,940 to $189,990."

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

That the Mayor is hereby authorized and directed to sign Change Order No. 1 with Thaxton Construction Co., Inc., in the amount of $15,050, for the Three Retaining Walls Project (Pacific Street, Stonewall Drive, and Skyline Road), to add soldier piles and lagging to extend the retaining wall at Pacific Street by approximately 20 feet to accommodate an expansion of the slip area which occurred after the project was advertised for bids. Change Order No. 1 increases the contract from $174,940 to $189,990.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 001-11, adopted.

3. Your Committee on Finance has had under consideration Resolution No 002-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 002--11 : "Authorizing the Mayor to sign and submit Community Participation Program grant contracts and all related documents for ten (10) projects."

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 Community Participation Program grant contracts and all related documents for ten (10) projects on behalf of the following agencies:

Bob Burdette Center	11LEDA0520	$ 4,000
Charleston Area Alliance	11LEDA0139	$20,000
Charleston Area Alliance	11LEDA0141	$40,000
Charleston Area Alliance	11LEDA0513	$ 4,000
Good News Mountaineer Garage	11LEDA0518	$ 2,375
Kanawha City Community Association	11LEDA0530	$35,000
Literacy Volunteers	11LEDA0030	$ 500
Pro-Kids, Inc.	11LEDA0547	$ 1,000
WV International Film Festival	11LEDA0031	$10,000
YWCA Sojourner's Shelter	11LEDA0535	$18,000

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas – 24, abstain- 1, absent - 3, as follows:
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Haas, Kirk, Lane, Miller, Minardi, Nichols, Reishman, Richardson, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSTAIN: Salisbury
ABSENT:, Harrison, Persinger, Russell
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 002-11 adopted

4. Your Committee on Finance has had under consideration Resolution No 003-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 003-11 : "Authorizing the Mayor to sign and submit Community Participation Program grant information sheets and all related documents for three (3) agencies located within the City of Charleston."

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

That the Mayor is hereby authorized and directed to sign and submit Community Participation Program grant information sheets and all related documents for the following agencies located within the City of Charleston.

National Youth Science Foundation	11LEDA0538	$1,500
Boys and Girls Club	11LEDA0541	$4,370
Capitol Market, Inc.	08LEDA0959N	$9,300

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas – 23, abstain- 2, absent - 3, as follows:
YEAS: Burka, Davis, Deneault, Dodrill, Ealy, Haas, Kirk, Lane, Miller, Minardi, Nichols, Reishman, Richardson, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSTAIN: Salisbury, Burton
ABSENT:, Harrison, Persinger, Russell
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 003-11 adopted

5. Your Committee on Finance has had under consideration Resolution No 004-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 004-11 : "Authorizing the Finance Director to allocate funds in the amount of $21,000 for acquisition of property located on the east end of Charleston for the Religious Coalition for Community Renewal (RCCR) to be used for construction of one single family housing unit."

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

That the Finance Director is hereby authorized and directed to allocate funds in the amount of $21,000 for acquisition of property located on the east end of Charleston for the Religious Coalition for Community Renewal (RCCR) to be used for construction of one single family housing unit.

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas – 25, abstain- 0, absent - 3, as follows:
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Haas, Kirk, Lane, Miller, Minardi, Nichols, Reishman, Richardson, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSENT:, Harrison, Persinger, Russell
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 004-11 adopted

6. Your Committee on Finance has had under consideration Resolution Number 005-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 005-11 : "Authorizing the Mayor to receive and administer grant funds in the amount of $843,800.00 from the West Virginia Governor's Office of Highway Safety. The funds will be used to purchase equipment and provide overtime and travel/training expenses to police agencies in the four-county Metro Valley Highway Safety Program of Kanawha, Boone, Clay, and Logan counties for the support of DUI, child passenger safety, Click It or Ticket and other safety related programs."

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

That the Mayor is hereby authorized and directed to receive and administer grant funds in the amount of $843,800.00 from the West Virginia Governor's Office of Highway Safety. The funds will be used to purchase equipment and provide overtime and travel/training expenses to police agencies in the four-county Metro Valley Highway Safety Program of Kanawha, Boone, Clay, and Logan counties for the support of DUI, child passenger safety, Click It or Ticket and other safety related programs.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 005-11, adopted.

7. Your Committee on Finance has had under consideration Resolution Number 006-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 006-11: "Authorizing the Mayor to receive and administer grant funds from the West Virginia Division of Justice and Community Services, Juvenile Justice and Delinquency Prevention, in the amount of $59,544, to provide funds for purchase of equipment for the Charleston Police Department's Juvenile Processing Area."

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

That the Mayor is hereby authorized and directed to receive and administer grant funds from the West Virginia Division of Justice and Community Services, Juvenile Justice and Delinquency Prevention, in the amount of $59,544, to provide funds for purchase of equipment for the Charleston Police Department's Juvenile Processing Area

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 006-11, adopted.

8. Your Committee on Finance has had under consideration Resolution Number 007-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 007-11 : "Authorizing the Finance Director to issue a refund in the amount of $42,642.78 to Hill, Peterson, Carper, Bee & Deitzler, PLLC for overpayment of Business & Occupation ("B&O") Tax for the period April 1, 2010 through September 30, 2010. The refund is due to the taxpayer inadvertently reporting year-to-date revenues for the six and nine month periods on their 2nd and 3rd quarter 2010 B&O Tax returns."

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

That the Finance Director is hereby authorized and directed to issue a refund in the amount of $42,642.78 to Hill, Peterson, Carper, Bee & Deitzler, PLLC for overpayment of Business & Occupation ("B&O") Tax for the period April 1, 2010 through September 30, 2010. The refund is due to the taxpayer inadvertently reporting year-to-date revenues for the six and nine month periods on their 2nd and 3rd quarter 2010 B&O Tax returns.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 007-11, adopted.

9. Your Committee on Finance has had under consideration Resolution Number 008-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 008-11 : "Authorizing a Memorandum of Understanding ("MOU") to be entered into between the Charleston City Collector and the Kanawha County Assessor (the "Parties") to facilitate the exchange of certain public information incorporated in the attached MOU and made a part hereof."

WHEREAS, the purpose of this agreement is to facilitate the exchange of certain public information to aid the Parties in carrying out their respective operations related to real property ownership and valuation of the same located in the City of Charleston, Kanawha County, West Virginia; and

WHEREAS, the information exchange will enable the City to be more timely and accurate in updating ownership records for municipal fee billings purposes and will enable the County to identify any residential class 4 (rental) properties that are not listed on the tax rolls; now, therefore

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

That the Charleston City Collector and the Kanawha County Assessor (the "Parties") are hereby authorized and directed to enter into a Memorandum of Understanding ("MOU") to facilitate the exchange of certain public information to aid the Parties in carrying out their respective operations related to real property, ownership and valuation of the same located in the City of Charleston, Kanawha County, West Virginia. The MOU will become effective following Council approval and may be terminated at any time and for any reason upon the written notice of either of the Parties to the other.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 008-11, adopted.

10. Your Committee on Finance has had under consideration Resolution Number 009-11, and reports the same to Council with recommendation that the resolution be adopted.

Resolution No. 009-11-Resolution requesting the City Council of the City of Charleston, West Virginia to authorize the City of Charleston to file civil actions in the Circuit Court of Kanawha County for the condemnation of property for sanitary sewer easements necessary for the Sanitary Board of the City of Charleston, West Virginia to construct, install and complete its Kanawha Two Mile Sewer Rehabilitation and Replacement Project.

WHEREAS, the Sanitary Board of the City of Charleston, West Virginia (the "Sanitary Board") is pursuing a sewer rehabilitation and replacement project in the Kanawha Two Mile area of the City of Charleston (the "Project") which is necessary to correct older, failing sewer collection lines and is necessary for the health and welfare of the citizens of the City of Charleston;

WHEREAS, the Project includes the rehabilitation and/or replacement of approximately 106,000 feet of sewer lines, and numerous permanent easements and temporary construction easements are necessary to undertake and complete the Project;

WHEREAS, the Sanitary Board and its rights-of-way agents have diligently sought easement agreements for such necessary easements from the affected property owners and have received and recorded many signed easement agreements;

WHEREAS, due to numerous factors including, but not limited to, out-of-state property owners, properties held in heirships with numerous heirs, some whose location is unknown, and uncooperative or uncommunicative property owners, the Sanitary Board has been unable to obtain by negotiation and agreement all of the necessary sewer easements;

WHEREAS, the Sanitary Board has no choice but to request the City of Charleston to authorize the filing of civil actions for the acquisition, pursuant to the City of Charleston's power of eminent domain, certain property interests in order to obtain the necessary sewer easements for the Project; now, therefore,

Be it Resolved by the Council of the City of Charleston, West Virginia, as follows:

Section 1. To accomplish construction of the sewer rehabilitation and replacement project in the Kanawha Two Mile area of the City of Charleston necessary for the health and welfare of the citizens of the City of Charleston, the Sanitary Board of the City of Charleston, West Virginia ("CSB") must obtain easements across and through certain properties as set forth on Exhibit A to this Resolution.

Section 2. The Sanitary Board requests the City Council of the City of Charleston to authorize the City of Charleston, on behalf of and by and through the Sanitary Board and its counsel to file civil actions for the acquisition for the Sanitary Board, pursuant to the power of eminent domain, of the property interests set forth on Exhibit A and to take such other and further action as may be reasonably necessary to acquire the property rights for easements necessary to construct, install, operate, maintain, repair, replace, rehabilitate, line and remove sewer lines and appurtenances thereto.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 009-11, adopted.

11. Your Committee on Finance has had under consideration Resolution Number 010-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 010-11: "Authorizing the Finance Director to amend the 2011-2012 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 amend the 2011-2012 General Fund budget as indicated on the attached list of accounts.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 010-11, adopted.

12. Your Committee on Finance has had under consideration Resolution Number 011-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 011-11 : "Authorizing the Mayor to enter into an agreement with Tri-State Roofing & Sheet Metal Co., in the amount of $99,987, for Replacement of a Section of the Roof at the Charleston Civic Center Convention Hall. The total price includes the replacement of metal decking."

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 Tri-State Roofing & Sheet Metal Co., in the amount of $99,987, for Replacement of a Section of the Roof at the Charleston Civic Center Convention Hall. The total price includes the replacement of metal decking.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 011-11, adopted.

13. Your Committee onFinance has had under consideration a bid submitted by ELSAG North America, in the amount of $20,375, for purchase of one MPH-900 License Plate Reader to be used by MDENT on a selected vehicle. To be charged to Account No. 097-976-07-000-4-459, Police—2007 COPS Meth Grant, and reports the same to Council with the recommendation that the committee report be adopted

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the committee report adopted.

14. Your Committee on Finance has had under consideration Bill No. 7490, and reports the same to Council with the recommendation that the Bill do pass.

Bill No. 4790 ---------- Supplementing Ordinance No. 4423 passed by the Council of The City of Charleston, West Virginia, on March 6, 1989, and subsequent supplemental ordinances set forth in said Bill, through Ordinance No. 7132 passed by the Council on March 7, 2005; authorizing the design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of The City of Charleston; authorizing the issuance of not more than $30,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, in one or more series as designated in a supplemental resolution, of The City of Charleston, the proceeds of which shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to fund reserve

accounts for such bonds and to pay other costs in connection therewith; 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 were; yeas – 25, absent - 3, as follows:
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Haas, Kirk, Lane, Miller, Minardi, Nichols, Reishman, Richardson, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSENT:, Harrison, Persinger, Russell
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7482, passed

NEW BILLS
Introduced by Council member Ed Talkington, on September 6, 2011:
Bill No. 7491 - amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning from an R-4 district to an R-10 district, that certain parcel of land situate at 810 Grant Street, Charleston, West Virginia.
Refer to Municipal Planning Commission and Planning Committee.

ROLL CALL
YEAS: Burka, Burton, Davis, Deneault, Dodrill, Ealy, Haas, Kirk, Lane, Miller, Minardi, Nichols, Reishman, Richardson, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub,White, Mayor Jones.
ABSENT: Harrision, Persinger, Russell

At 8:05 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, September 19, 2011, at 7:00 p.m.

_____
Danny Jones, Honorable Mayor

_____
James M. Reishman, City Clerk

AGENDA
CHARLESTON CITY COUNCIL
September 6, 2011

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS

CLAIMS

TO READ AND DISPOSE OF COMMUNICATION

MISCELLANEOUS RESOLUTIONS

PLANNING

1. Bill No 7482 : a Bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made part thereof, by rezoning from a R-4 district to a R-10 district, that certain parcel of land situate at 2114 Pennsylvania Ave., Charleston, West Virginia.

FINANCE

1. Resolution No. 999-11—Authorizing the Mayor to Sign Change Order No. 3 with Michael Baker Jr., Inc. Providing for Construction Inspection Services for the South Side Bridge, Pier "C" and Loudon Heights Bridge Project ($23,852)

2. Resolution No. 001-11—Change Order No. 1 with Thaxton Construction Co. for the Three Retaining Walls Project as it Relates to Pacific Street ($15,050)

3. Resolution No. 002-11—Authorizing the Mayor to Sign and Submit Community Participation Program Grant Contracts for Ten Projects

4. Resolution No. 003-11—Authorizing the Mayor to Sign and Submit Community Participation Program Grant Information Sheets for Three Agencies

5. Resolution No. 004-11—Allocation of Funds for Acquisition of Property on the East End for Religious Coalition for Community Renewal ($21,000)

6. Resolution No. 005-11—Authorizing the Mayor to Receive and Administer Grant Funds from the WV Governor's Highway Safety Program ($843,800)

7. Resolution No. 006-11—Authorizing the Mayor to Receive and Administer Grant Funds from the WV Division of Justice and Community Services, Juvenile Justice and Delinquency Prevention ($59,544)

8. Resolution No. 007-11—Authorizing Refund to Hill, Peterson, Carper, Bee and Deitzler, PLLC for Overpayment of B&O Taxes for the Period April1, 2010 through September 30, 2010 ($42,642.78)

9. Resolution No. 008-11—Authorizing Memorandum of Understanding between the Charleston City Collector and the Kanawha County Assessor to Facilitate Exchange of Public Information Relating to Real Property Ownership and Valuation of Same

10. Resolution No. 009-11—Requesting City Council to Authorize the City of Charleston to File Civil Actions in the Circuit Court of Kanawha County for Condemnation of Property for Sanitary Sewer Easements Necessary for the Sanitary Board to Complete its Kanawha Two Mile Sewer Project

11. Resolution No. 010-11—Budget Revision No. 3—FY 2011-2012 (General Fund)

12. Resolution No. 011-11—Agreement for Replacement of a Section of the Roof at the Charleston Civic Center Convention Hall ($99,987)

13. Purchase of MPH-900 License Plate Reader for MDENT ($20,375)

14. Bill No. 7490—Sewerage System Bond Supplemental Ordinance

REPORTS OF OFFICERS

NEW BILLS INTRODUCED

UNFINISHED BUSINESS OR MISCELLANEOUS BUSINESS

ROLL CALL

THE NEXT REGULAR MEETING OF COUNCIL WILL BE

Monday, September 19, 2011 at 7:00 p.m.

JOURNAL

OF THE

COUNCIL

CITY OF CHARLESTON

WEST VIRGINIA

September 19, 2011

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE SECOND MEETING IN THE MONTH OF SEPTEMBER ON THE 19th DAY, IN THE YEAR 2011, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED BY RICHARDSON AND THE PLEDGE OF ALLEGIANCE WAS LED BY WHITE.

BURKA		CLOWSER
DAVIS	DENEAULT	DODRILL
EALY	HAAS	
KIRK	LANE	MILLER
	NICHOLS	PERSINGER
REISHMAN	RICHARDSON	RUSSELL
SALISBURY	SHEETS	SMITH
SNODGRASS	STAJDUHAR	TALKINGTON
		WHITE
MAYOR JONES		

WITH TWENTY-THREE 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.

PUBLIC SPEAKERS

Don Boardwine – Kanawha Animal Shelter
Vickie Hairston – Work Release Center

CLAIMS

A claim of Harley Hodges, 1145 Woodward Dr., Charleston, WV; alleges damage to vehicle.
Refer to City Solicitor

A claim of Dewey Lee Taylor, 906 Rugby St., Charleston, WV; alleges damage to property.
Refer to City Solicitor

A claim of Robert Loughry, 3907 Staunton Ave., Charleston, WV; alleges damage to vehicle.
Refer to City Solicitor

A claim of Pete and Julie Schleider, 4502 Kanawha Ave., SE, Charleston, WV; alleges damage to vehicle. Refer to City Solicitor

A claim of Michael Hairston, 206 Bream St., Charleston, WV; alleges damage to property.
Refer to City Solicitor

A claim of Carol Brown, 204 Bream St., Charleston, WV; alleges damage to property.
Refer to City Solicitor

A claim of Anna Farrister, 1209 Homer St., Charleston, WV; alleges damage to property.
Refer to City Solicitor

PUBLIC HEARING

Bill No. 7490 - Bill No. 7490 A Bill authorizing the design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of The City of Charleston; authorizing the issuance of not more than $30,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, in one or more series as designated in a supplemental resolution, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction, to fund reserve accounts for such bonds and to pay other costs in connection therewith; providing for the rights and remedies of and security for the registered owners of such bonds; and adopting other provisions related thereto.

With no speaker from the Public to speak in favor of or opposed to the Public Hearing the Chair declared the Public Hearing on Bill 7490 closed.

MISCELLANEOUS RESOLUTIONS

Resolution No. 012-11

Introduced in Council: September 19, 2011 Passed by Council: September 19, 2011

Sponsored by: Tom Lane, President
Jack Harrison, Majority Leader

Bobby Reishman, Minority Leader

WHEREAS, Mike Clowser, a member of Charleston City Council since 2003, was recently elected Chairman of the Associated General Contractors of America's Executive Leadership Council; and

WHEREAS, the General Contractors of America is an association representing 33,000 general contractors, specialty contractors, service providers and suppliers throughout the United States; and

WHEREAS, the Executive Leadership Council of the Association is comprised of 95 chapter executives with a mission to provide continuous and timely professional development, networking opportunities and leadership skills to its members; and

WHEREAS, Mike Clowser's leadership role with this important national association provides prominence for West Virginia and the City of Charleston; and

WHEREAS, a small measure of this prominence was brought to Charleston through Mike Clowser's position in an announcement on August 30, 2011, in which statistics on construction jobs were announced at the new West Side Elementary School. At this announcement this new Charleston school was featured for cutting edge technologies in school construction.

NOW THEREFORE, BE IT RESOLVED BY THE CHARLESTON CITY COUNCIL: That it recognize its own member, Councilman Mike Clowser, for his many accomplishments and in particular his becoming Chairman of the Executive Leadership Council of the General Contractors of Americas and in this capacity for bringing honor and recognition to West Virginia and the City of Charleston.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 012-11, adopted.

Resolution No. 017-11 :

Introduced in Council:
September 19, 2011

Adopted by Council:
_____

Introduced by:

Tom Lane

Referred to:
_____

Resolution No. 017-11: "A Resolution pursuant to the authority granted in the Code of the City of Charleston Chapter Two, Section 70, to amend Appendix A of the Code of the City of Charleston, Rules of Council, Rule No. 2, regarding the standing committees of City Council.

Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:

That pursuant to the authority granted in the Code of the City of Charleston Chapter Two, Section 70, Appendix A of the Code of the City of Charleston, Rules of Council, Rule No. 2 Committees, is hereby amended as follows:

Rule No. 2. - Committees.

(a) The city council shall have the following standing committees:

Committee on finance.

Committee on ordinance and rules.

Committee on planning.

Committee on ~~fire, police and~~ public safety.

~~Committee on health and sanitation.~~

Committee on parks and recreation.

Committee on streets and traffic.

Committee on environment and recycling.

~~Committee on the homeless.~~

~~Committee on city employees.~~

Committee on Urban Renewal.

Committee on Facilities.

Committee on Parking Facilities.

(b) All standing committees shall consist of not less than three nor more than nine members unless the city council by resolution specifically provides otherwise. All standing committees shall be appointed by the mayor.~~, except the committee on city employees, whose members and chair shall be appointed by the president, majority leader and minority leader of the council.~~ The members of the Committee on Parking Facilities shall be the same as those appointed and serving as the members of the Committee on Finance.

(c) In addition to the foregoing standing committees, the city council may authorize such select committees as may be provided by resolution.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 017-11, adopted. NAYS: Kirk, Smith, Sheets

FINANCE

Councillperson Robert Reishman, Chairperson of the Council Committee on Finance, submitted the following reports.

1. Your Committee on Finance has had under consideration Resolution No 013-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 013-11: "Authorizing the Mayor to apply for the FY 2011 Emergency Management Performance Grant ("EMPG") through the West Virginia Division of Homeland Security and Emergency Management. This grant will assist the City in continuing

and improving its emergency management response system and will reimburse the City 50% for most of the operating and other costs incurred by the Office of Emergency Services and Homeland Security."

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

That the Mayor is hereby authorized and directed to apply for the FY 2011 Emergency Management Performance Grant ("EMPG") through the West Virginia Division of Homeland Security and Emergency Management. This grant will assist the City in continuing and improving its emergency management response system and will reimburse the City 50T for most of the operating and other costs incurred by the Office of Emergency Services and Homeland Security.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 013-11, adopted

2. Your Committee on Finance has had under consideration Resolution No 014-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 014-11: "Authorizing the Mayor to sign and submit a Community Participation Program grant contract and all related documents on behalf of one agency."

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 a Community Participation Program grant contract and all related documents on behalf of the following agency:

WV Master Gardeners Association 11LEDA0034 $10,000.00

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas – 23, absent - 5, as follows:
YEAS: Burka, Davis, Deneault, Dodrill, Ealy, Haas, Kirk, Lane, Miller, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, White, Mayor Jones.
ABSENT: Burton,Harrison, Minardi, Ware, Weintraub
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 014-11 adopted

3. Your Committee on Finance has had under consideration Resolution No 015-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 015-11: "Authorizing the Finance Director to allocate funds in the amount of $30,000.00 for acquisition of one (1) HOME project located in Charleston on the West Side."

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

That the Finance Director is hereby authorized and directed to allocate funds in the amount of $30,000.00 for acquisition of one (1) HOME project located in Charleston on the West Side.

The question being on the adoption of the Resolution. A roll call was taken and there were;

yeas – 23, absent - 5, as follows:
YEAS: Burka, Davis, Deneault, Dodrill, Ealy, Haas, Kirk, Lane, Miller, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, White, Mayor Jones.
ABSENT: Burton,Harrison, Minardi, Ware, Weintraub
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 015-11 adopted

4. Your Committee on Finance has had under consideration Resolution No 016-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 016-11 : "Authorizing the Mayor to enter into an agreement with Pipe Plus, Inc., in the amount of $234,850, for 2011 Storm Sewer Projects at Ferry Street, Northwood Road, Loudon Heights Road and Myrtle Road."

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 Pipe Plus, Inc., in the amount of $234,850, for 2011 Storm Sewer Projects at Ferry Street, Northwood Road, Loudon Heights Road and Myrtle Road.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 016-11, adopted

REPORTS OF OFFICERS

1. Report of the City of Charleston, Municipal Court Financial Statements; August 2011.
Received and Filed.

2. City Treasurer's Report to City Council Month Ending August 2011.
Received and Filed.

NEW BILLS

Introduced by Council member Robert Sheets, on September 19, 2011:
Bill No. 7493 - A Bill to establish a FIVE minute Parking Zone on the easterly side of Ruffner Avenue from a point 110' North of Jackson Street to point 132' North of Jackson 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 the Streets and Traffic Committee.

Introduced by Council member Cubert Smith, on September 19, 2011:
Bill No. 7494 - A Bill to establish a No Parking Anytime Tow Away Zone on both sides of Dudley Drive from a point 70' West of Greenbrier Street to a point 220' West of Greenbrier 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 the Streets and Traffic Committee.

Introduced by Council member Robert Reishman, on September 19, 2011:
Bill No. 7495 - "A BILL to authorize the Mayor on behalf of the City of Charleston to grant and convey to the Sanitary Board of the City of Charleston, a permanent sanitary sewer easement on a parcel of property located in Kanawha County, West Virginia, in the North Charleston Tax District, more particularly designated as Tax Map 92, Parcel 56, in which the City of Charleston owns an interest.
Refer to the Finance Committee.

ROLL CALL

YEAS: Burka, Davis, Deneault, Dodrill, Ealy, Haas, Kirk, Lane, Miller, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, White, Mayor Jones.
ABSENT: Burton,Harrison, Minardi, Ware, Weintraub

At 7:45 p.m., by a motion from Councilmember Lane, Council adjourned until Monday, October 3, 2011, at 7:00 p.m.

_____
Danny Jones, Honorable Mayor

_____
James M. Reishman, City Clerk

AGENDA
CHARLESTON CITY COUNCIL
September 19, 2011
Amended

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS

CLAIMS

PUBLIC HEARING - Bill No. 7490 - Sewerage System Bond Supplemental Ordinance

TO READ AND DISPOSE OF COMMUNICATION

MISCELLANEOUS RESOLUTIONS

1. Resolution No. 017-11— A Resolution amending Rule No. 2 of the Rules of Council regarding the standing committees of City Council.

FINANCE

1. Resolution No. 013-11—Authorizing the Mayor to Apply for FY 2011 Emergency Management Performance Grant ("EMPG")

2. Resolution No. 014-11—Authorizing the Mayor to Sign and Submit Community Participation Program Grant Contract on Behalf of One Agency ($10,000)

3. Resolution No. 015-11—Authorizing the Finance Director to Allocate Funds for Acquisition of One HOME Project ($30,000)

4. Resolution No. 016-11—Agreement for 2011 Storm Sewer Projects

REPORTS OF OFFICERS

NEW BILLS INTRODUCED

UNFINISHED BUSINESS OR MISCELLANEOUS BUSINESS

ROLL CALL

THE NEXT REGULAR MEETING OF COUNCIL WILL BE
Monday, October 3, 2011 at 7:00 p.m.

JOURNAL

OF THE

COUNCIL

CITY OF CHARLESTON

WEST VIRGINIA

December 5, 2011

THE COUNCIL MET IN CHAMBERS OF THE CITY BUILDING AT 7:00 P.M., FOR THE FIRST MEETING IN THE MONTH OF DECEMBER ON THE 5TH DAY, IN THE YEAR 2011, AND WAS CALLED TO ORDER BY THE HONORABLE MAYOR, DANNY JONES. THE INVOCATION WAS DELIVERED BY HARRISON AND THE PLEDGE OF ALLEGIANCE WAS LED BY MASON SUTLER.

BURKA	BURTON	CLOWSER
DAVIS	DENEAULT	DODRILL
EALY	HAAS	HARRISON
KIRK	LANE	MILLER
MINARDI	NICHOLS	PERSINGER
REISHMAN	RICHARDSON	RUSSELL
SALISBURY	SHEETS	SMITH
SNODGRASS	STAJDUHAR	TALKINGTON
WARE	WEINTRAUB	WHITE
MAYOR JONES		

WITH TWENTY- EIGHT 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.

PUBLIC SPEAKERS
1. Pat McGill
2. Phillip Dunn
3. Denise Giardina
4. Paul Harrison
5. Trebor Sutler

CLAIMS
A claim of Carolyn Miller, 1061 Branch Rd., Belle, WV; alleges damage to vehicle.
Refer to City Solicitor

APPOINTMENTS

TO: **JAMES REISHMAN**
CITY CLERK

FROM: **DANNY JONES**
MAYOR

RE: **MUNICIPAL HOME RULE COMMITTEE**

DATE: **DECEMBER 5, 2011**

I am reappointing a special committee of City Council to explore the City of Charleston's options, opportunities and implications under the state's municipal home rule legislation:

Jack Harrison, Chairman

Bobby Reishman, Vice Chairman

Mary Jean Davis

Andy Richardson

Chris Dodrill

Sam Minardi

Tom Lane

Kasey Russell

Jerry Ware

Received and Filed.

TO: **JAMES REISHMAN**
CITY CLERK

FROM: **DANNY JONES**
MAYOR

RE: **MUNICIPAL PLANNING COMMISSION**

DATE: **DECEMBER 5, 2011**

I recommend that Danny Scalise, 123 Sheridan Circle, Charleston, WV 25314, be appointed to the Municipal Planning Commission, with an initial term to expire July 1, 2013. He is replacing Ruth Elam.

I respectfully request City Council's approval of this recommendation.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the appointment confirmed.

STREETS AND TRAFFIC
Councillperson Joe Deneault, Chair Chairperson of the Council Committee on Streets and Traffic, submitted the following reports.

1. Your Committee on Streets and Trafic has had under consideration Bill No 7504, and reports the same to Council with the recommendation that the bill do pass.

Bill No. 7504 - A Bill to amend and reenact Ordinance # 4577 passed by Council June 18, 1990 relating to a No Parking Anytime Tow Away zone on the North side of Kanawha Boulevard, East from a point 400 feet east of Ruffner Avenue to a point 454 feet east of Ruffner Avenue, 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 is hereby established on the North side of Kanawha Boulevard, East from a point 329 feet east of Ruffner Avenue to a point 454 feet east of Ruffner Avenue.

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 were; yeas –28, absent - 0, as follows:
YEAS: Burka, Burton, Clowser, Davis, Deneault, Dodrill, Ealy, Haas, Harrison, Kirk, Lane, Miller,Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub ,White, Mayor Jones.
ABSENT:
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7504, adopted.

2. Your Committee on Streets and Trafic has had under consideration Bill No 7505, and reports the same to Council with the recommendation that the bill do pass.

Bill No. 7505 - A Bill to amend and reenact Bill number 7314 passed by Council January 22, 2008 relating to a STOP intersection on Graff Lane at Quarry Ridge South requiring vehicles on Graff Lane to STOP at Quarry Ridge South, 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 at the intersection of Quarry Ridge South and Graff Lane requiring vehicles traveling North to STOP and requiring vehicles traveling South 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 were; yeas –28, absent - 0, as follows:
YEAS: Burka, Burton, Clowser, Davis, Deneault, Dodrill, Ealy, Haas, Harrison, Kirk, Lane, Miller,Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub ,White, Mayor Jones.
ABSENT:
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7505, adopted.

3. Your Committee on Streets and Trafic has had under consideration Resolution No 047-11, and reports the same to Council with the recommendation that the resolution be adopted.

WHEREAS: The City of Charleston's Riverfront Development Plan, developed by Sasaki Associates in conjunction with City Council and many citizens, recommended several ideas for calming traffic along Kanawha Boulevard on the northern side of the riverbank as a means to connect people with the Kanawha River more safely and effectively; and

WHEREAS: The uninterrupted flow of vehicle traffic along Kanawha Boulevard poses a significant safety concern for pedestrians crossing the Boulevard and constitutes a major barrier between citizens and their ability to enjoy recreation and reflection along the riverbank; and

WHEREAS: A study by Transportation for America cited the Charleston metropolitan area's relatively high number of traffic accidents involving pedestrians and urged the City to take pro-active steps to make our community safer for pedestrians; and

WHEREAS: As part of the City or Charleston's efforts to improve safety and strengthen the connection between our community and the riverfront, as recommended by the Riverfront Development Committee of City Council, the uninterrupted flow of traffic on Kanawha Boulevard already has been changed at two key locations – Florida Street and Pennsylvania Avenue – with no adverse impacts on traffic and an important positive effect on safety at those intersections; and

WHEREAS: When the initial traffic signal changes for Kanawha Boulevard's crosswalks were proposed in 2006, several community organizations endorsed the proposal as a way to promote safety and access to the riverfront, including: the West Side Neighborhood Association, West Side Main Street, East End Main Street, the East End Association, West Virginia Trails Coalition, Mountain State Wheelers Bicycle Club, Kanawha-Charleston Health Department, and West Virginia On the Move; and

WHEREAS: The City's efforts to improve safety and strengthen the connection to the river can and will bear more fruit as the uninterrupted flow of vehicular traffic is re-examined and restricted at five other intersections within the city's jurisdiction of Kanawha Boulevard: Clendenin Street, McFarland Street, Leon Sullivan Way, Brooks Street and Morris Street; and

WHEREAS: The West Virginia Division of Highways is working with the City of Charleston on a project to upgrade the traffic signal system in Charleston and install new signals throughout the City on both State-maintained roads and City streets; and

WHEREAS: In conjunction with that project, WVDOH leaders have expressed a willingness to redefine traffic flow patterns where City leaders and officials deem changes as necessary or appropriate; and

WHEREAS: The WVDOH traffic signal project provides a timely and cost effective means by which the City of Charleston can improve public safety – especially for pedestrians – and public enjoyment of the riverfront without much impact on the flow of traffic into or through our community.

Therefore be it resolved by The Council and Mayor
of The City of Charleston, West Virginia:

That the elected leadership of the City of Charleston endorses new traffic signal programs to replace the uninterrupted eastbound flow of traffic along Kanawha Boulevard with traffic signals that include actuated exclusive pedestrian movements at the intersections of Clendenin Street, McFarland Street, Leon Sullivan Way, Brooks Street and Morris Street. We believe that these

changes will improve safety for pedestrians in our City and increase the connection between our citizens and activities along the riverfront with little or no appreciable impact on the flow of traffic.

Upon passage, the City Clerk of Charleston is authorized to forward this resolution to appropriate officials with the West Virginia Division of Highways and the State Legislators who represent the area in question.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 047-11, adopted.

FINANCE

Councillperson Jack Harrison, Chair Chairperson of the Council Committee on Finance, submitted the following reports.

1. Your Committee on Finance has had under consideration Resolution No 056-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 056-11 : "Authorizing the Finance Director to amend the 2011-2012 Civic Center Budget as indicated on the attached list of accounts."

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

That the Finance Director is hereby authorized and directed to amend the 2011-2012 Civic Center Budget as indicated on the attached list of accounts.

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas –28, absent - 0, as follows:
YEAS: Burka, Burton, Clowser, Davis, Deneault, Dodrill, Ealy, Haas, Harrison, Kirk, Lane, Miller,Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub ,White, Mayor Jones.
ABSENT:
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 056-11 adopted.

2. Your Committee on Finance has had under consideration Resolution No 057-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 057-11 : "Authorizing the Finance Director to amend the 2011-2012 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 amend the 2011-2012 General Fund budget as indicated on the attached list of accounts.

The question being on the adoption of the Resolution. A roll call was taken and there were; yeas –28, absent - 0, as follows:

YEAS: Burka, Burton, Clowser, Davis, Deneault, Dodrill, Ealy, Haas, Harrison, Kirk, Lane, Miller,Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub ,White, Mayor Jones.
ABSENT:
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Resolution No. 057-11 adopted.

3. Your Committee on Finance has had under consideration Resolution No 058-11, and reports the same to Council with the recommendation that the resolution be adopted.

A resolution supplementing Ordinance No. 7490, passed by the Council of The City of Charleston, West Virginia, on September 6, 2011, which supplemented Ordinance No. 4423 passed by the Council on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the Council on November 6, 1989, by Ordinance No. 4954 passed by the Council on May 3, 1993, by Ordinance No. 6276 passed by the Council on September 3, 1996, by Ordinance No. 6349 passed by the Council on June 2, 1997, by Ordinance No. 6532 passed by the Council on November 16, 1998, by Ordinance No. 6544 passed by the Council on February 1, 1999, by Ordinance No. 6670 passed by the Council on February 5, 2001, by Ordinance No. 6777 passed by the Council on March 19, 2001, by Ordinance No. 6948 passed by the Council on November 4, 2002; by Ordinance No. 6977 passed by the Council on May 19, 2003, and by Ordinance No. 7132, passed by the Council on March 7, 2005; authorizing the issuance of $25,877,009 in aggregate principal amount of Sewerage System Revenue Bonds, Series 2011 A, of The City of Charleston, the proceeds of which, shall be used, along with other funds and moneys of, or available to, The City of Charleston which may be lawfully expended for such purposes, to permanently finance the cost of design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of The City of Charleston, to fund a reserve account for such bonds and to pay other costs in connection therewith; providing for the rights and remedies of and security for the registered owners of such bonds; and adopting other provisions related thereto.

WHEREAS, the Council (the "Council") of The City of Charleston, West Virginia (the "City"), on September 6, 2011, adopted Ordinance No. 7490, which became effective following a public hearing on September 19, 2011 (the "Ordinance"), authorizing the issuance of The City of Charleston Sewerage System Revenue Bonds, in an aggregate principal amount not to exceed $30,000,000, in one or more series, to permanently finance the cost of design, acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage system of the City (the "Project");

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Ordinance when used herein;

WHEREAS, pursuant to the Ordinance, the Council desires to issue its Sewerage System Revenue Bonds, Series 2011 A (the "Bonds") in an aggregate principal amount of $25,877,009, to permanently finance the costs of the Project to fund a reserve account, and to pay the costs of issuance of the Bonds;

WHEREAS, the Ordinance provides for the issuance of the Bonds, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), and further provides that the exact principal amount, series designation, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of and matters relating to, the Bonds should be established by a supplemental resolution;

WHEREAS, the Bonds are proposed to be purchased by the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Department of Environmental Protection (the "DEP") pursuant to the West Virginia Clean Water SRF Program pursuant to the terms and conditions set forth under a Loan Agreement by and among the City, the Authority and the DEP (collectively, the "Loan Agreement"); and

WHEREAS, the Council deems it essential and desirable that this resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be entered into by the City, that parameters be established for the exact principal amount, series designation, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA, AS FOLLOWS:

Section 1. It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Bond Ordinance (the "Notice") was duly published in *The Charleston Gazette* and *The Charleston Daily Mail*, 2 qualified newspapers published and of general circulation in the Issuer, with the first publication thereof being not less than 10 days before the day set by the Bond Ordinance and the Notice for the public hearing at which interested persons may appear before the Council and present protests and suggestions and with the last publication thereof being prior to said date set by the Bond Ordinance and the Notice for the public hearing, and a copy of the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Bond Ordinance and the Notice, the Clerk has maintained in his or her office a certified copy of the Bond Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council chambers, City Hall, Charleston, West Virginia, on September 19, 2011, at 7:00 p.m., prevailing time, in accordance with the Bond Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Bond Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Bond Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Issuer; and

(E) The Bond Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Bond Ordinance and this Supplemental Resolution.

Section 2. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the:

There is hereby authorized The City of Charleston Sewerage System Revenue Bonds, Series 2011 A (West Virginia SRF Program) (the "Bonds") in the aggregate principal amount of $25,877,009 which will be initially represented by a single bond, numbered AR-1. The Bonds shall be dated the date of delivery, shall finally mature on September 1, 2033, and shall bear interest at a rate of 2% per annum. The principal and interest on the Bonds shall be payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing December 1, 2013, in the amounts as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Issuer hereby approves and shall pay the SRF Administrative Fee equal to 1% of the principal amount of the Bonds set forth in the Schedule Y attached to the Loan Agreement. The SRF Administrative Fee shall be considered Operating Expenses of the City (Sanitary Board). The Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Bonds.

Section 3. All other provisions relating to the Bonds shall be as provided in the Ordinance. The text of the Bonds shall be in substantially the forms provided in the Ordinance. The execution of the Bonds by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 4. The Loan Agreement for the Bonds by and among the Authority, the City, and the DEP, substantially in the form to be attached hereto as Exhibit A, and the execution and delivery (in multiple counterparts) by the Mayor thereof shall be and the same are hereby authorized, approved, ratified and directed. The Mayor is authorized to execute and deliver the Loan Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Loan Agreement by the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the Loan Agreement relating to the issuance and sale of the Bonds. The City hereby affirms all covenants and representations made in the Loan Agreement and in the application to the DEP and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon.

Section 5. The City hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), as the Paying Agent for the Bonds.

Section 6. The City hereby appoints and designates United Bank, Inc., Charleston, West Virginia, as the Registrar for the Bonds and the Depository Bank for the Bonds Construction Trust Fund (the "Depository Bank" or "Registrar"). The City hereby appoints JPMorgan Chase Bank, NA, Charleston, West Virginia, as the Depository Bank for the Revenue Fund. The City approves and accepts the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein on behalf of the Issuer, are hereby authorized, directed and approved.

Section 7. The Bonds shall be issued on a parity with the First Lien Bonds with respect to liens, pledge and source of and security for payment and in all respects. The Bonds shall be secured by a first lien on the Net Revenues derived from the System on a parity with the First Lien Bonds but senior and superior to the Second Lien Bonds.

Section 8. Bonds proceeds in the amount of $-0- shall be deposited in the Series 2011 A Bonds Sinking Fund as capitalized interest.

Section 9. Bonds proceeds in the amount of $1,573,017 shall be deposited in the Series 2011 A Bonds Reserve Account.

Section 10. The Council hereby finds and determines (A) that none of the items for which payment is proposed to be made has formed the basis for any disbursement theretofore made; (B) that each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project; (C) that each of such costs has been otherwise properly incurred; and (D) that payment for each of the items proposed is now due and owing. The Council hereby approves, authorizes and directs the payment of the invoices authorized by the Sanitary Board.

Section 11. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents, agreements and certificates required or desirable in connection with the Bonds. The City hereby approves and accepts all contracts or agreements relating to the financing, design, acquisition and construction of the Project and hereby authorizes the Sanitary Board to enter into all contracts or agreements relating to the design, acquisition and construction of the Project. The Manager of the Sanitary Board is hereby authorized to execute all pay requests under the Bonds.

Section 12. The design, acquisition and construction of the Project and the financing thereof with proceeds of the Bonds are in the public interest, serve a public purpose of the City and will promote the health, welfare and safety of the residents of the City.

Section 13. The City hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Depository Bank until expended, in Money Market accounts secured by a pledge of Government Obligations, and therefore, the City hereby directs the Depository Bank to invest all moneys in such Money Market accounts until further directed in writing by the Issuer. Moneys in the Series 2011 A Bonds Sinking Fund and

the Series 2011 A Bonds Reserve Account shall be invested by the Commission in the West Virginia Consolidated Fund.

Section 14. The City hereby approves the cost of issuance and authorizes the payment of the same.

Section 15. This Supplemental Resolution shall take effect immediately upon adoption hereof.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 058-11, adopted.

4. Your Committee on Finance has had under consideration Resolution No 059-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 059-11 : "Authorizing the Mayor and/or City Manager to submit an Intent-to-Apply application to the Safe Routes to School Grant Program for the John Adams Middle School project."

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

That the Mayor and/or City Manager is hereby authorized and directed to submit an Intent-to-Apply application to the Safe Routes to School Grant Program for the John Adams Middle School project.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 059-11, adopted.

5. Your Committee on Finance has had under consideration Resolution No 060-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 060-11 : "Authorizing the Mayor and/or City Manager to submit an Intent-to-Apply application to the West Virginia Department of Transportation for grant funds to support the Elk River Walkway project."

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

That the Mayor and/or City Manager is hereby authorized and directed to submit an Intent-to-Apply application to the West Virginia Department of Transportation for grant funds to support the Elk River Walkway project.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 060-11, adopted.

6. Your Committee on Finance has had under consideration Resolution No 061-11, and reports the same to Council with the recommendation that the resolution be adopted.

Resolution No. 061-11 : "Authorizing the Mayor and/or City Manager to sign an agreement

with eCivis for a Grants Research and Grants Management Program, in the amount of $31,500 over a three year period. The Program will research grants opportunities and grants management services for City personnel to include the City Manager's office and the Police and Fire departments."

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

That the Mayor and/or City Manager is hereby authorized and directed to sign an agreement with eCivic for a Grants Research and Grants Management Program, in the amount of $31,500 over a three year period. The Program will research grants opportunities and grants management services for City personnel to include the City Manager's office and the Police and Fire departments.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the resolution 061-11, adopted.

7. Your committee on Finance has had under consideration a proposal submitted by Power Systems Engineering, in the amount of $16,230.00, for purchase of 300 uninterruptable power supply (UPS) units to be used by the Information Systems Department. To be charged to Account No. 001-975-00-439-4-459, I.S. Dept.—Capital Outlay, Equip. , and reports the same to council with the recommendation that the committee report be adopted.

With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the committee report adopted.

8. Your Committee on Finance has had under consideration Bill No 7506, as amended, and reports the same to Council with the recommendation that the bill do pass.

Bill No. 7506: A BILL amending the title of Chapter 54, Article II, Division 3 of the Municipal Code of the City of Charleston to include "Duty Hours and Calculation of Overtime Pay"; to amend Chapter 54, Article II, Division 3, Sections 54-101, 54-102, 54-103, 54-104, and 54-105, of the Municipal Code of the City of Charleston as amended; and to create Section 54-106 of Chapter 54, Article II, Division 3, of the Code of the City of Charleston titled "Daily and weekly duty hours; pay periods; calculation of overtime pay; trading assigned shifts".

Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

That the title of Chapter 54, Article II, Division 3 is hereby amended to read as follows:

"Division 3. Vacation, Other Leave, Duty Hours, and Calculation of Overtime Pay";

and that Chapter 54, Article II, Division 3 of the Municipal Code of the City of Charleston, as amended, is hereby further amended to read as follows:

"Sec. 54-101. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Member shall mean any sworn employee of the fire department hired under the provisions of West Virginia State Code Chapter 8, Article 15.

Day for members on shift duty means a 12-hour period which represents half of a shift.

Shift for members on shift duty means a 24-hour period of duty or two days as defined in this section.

Working day for members on a 40-hour week means an eight-hour consecutive period of duty.

Sec. 54-102. - Annual vacation leave.

On or after January 1, 2012, each uniformed member shall be entitled to receive annual vacation leave with pay which shall accrue as follows:

(1) For a member on shift duty:

a. Fourteen (14) hours credited on the last day of each month which shall equate to seven shifts or 14 days per calendar year, or a pro rata share if employed less than one year, for the first 14 years of service.

b. Eighteen (18) hours credited on the last day of each month which shall equate to nine shifts or 18 days per calendar year for those with 15 or more years of service.

(2) For members on a 40-hour week:

a. Monthly credit of 1¼ working days (i.e., 10 hours) credited on the last day of each month during the first 14 years of service.

b. Monthly credit of 12/3 working days (i.e., 13 hours 20 minutes) credited on the last day of each month for those with 15 or more years of service.

Such leave shall not be cumulative from year to year; it must be taken within the calendar year earned in accordance with the schedule established by the fire chief or be forfeited. Any such leave which has accrued but has not been used at the time of retirement or separation from employment shall be a credit which shall be paid at regular wage rates along with any outstanding wages due and owing to the employee. Any such leave which has been used but has not yet accrued at the time of retirement or separation from employment shall be deemed an unsatisfied advance and may be treated as a payroll deduction from any outstanding wages then due and owing to the employee, to the extent permitted by state and federal law.

Sec. 54-103. – Personal contingency leave; sick leave.

(a) Beginning January 1, 2012, each uniformed member shall be entitled to and granted personal contingency leave in lieu of sick leave-with full pay. Such leave shall accrue as follows:

(1) For a member on shift duty: Eight (8) hours credited on the last day of each month which will equate to four (4) shifts per calendar year, or a pro rata share thereof if employed less than one whole year; provided, members employed and assigned to shift duty on January 1, 2012, shall be awarded and start the year with a one-time credit of 24 hours of personal contingency leave.

(2) For a member on a 40-hour week: Four (4) hours credited on the last day of each month which will equate to six (6) working days per calendar year, or a pro rata share thereof if employed less than one whole year; provided, members employed and assigned

to a 40-hour week on January 1, 2012, shall be awarded and start the year with a one-time credit of eight (8) hours of contingency leave.

Personal contingency leave may, upon proper notice, be taken without regard to reason or the restrictions imposed on the granting of sick leave. At the end of each calendar year, any accrued but unused personal contingency leave in excess of 48 hours for those on shift work and in excess of 24 hours for those working a 40-hour week shall be converted to sick leave.

(b) When a member retires, the member will have the privilege of converting up to 144 hours of sick leave accrued under Section 54-103(a) on or after January 1, 2012, or any remaining unused sick leave accrued prior to January 1, 2012, whichever is greater, to insurance benefits based on the formula of two days sick leave (i.e., 24 hours) for one month single coverage insurance premium or three days sick leave (i.e., 36 hours) for one month family coverage insurance premium. Any sick leave accrued by a member under Section 54-103(a) on or after January 1, 2012, that is not converted to insurance benefits to the extent permitted by this section shall be forfeited effective as of the date of the member's retirement or separation from employment.

(c) Sick leave shall be granted for the following reasons:

(1) Illness on the part of or injury to the member, incapacitating him or her for duty.

(2) Illness in the immediate family, i.e. spouse, child, father, mother, sister, brother, father-in-law and mother-in-law, of such a critical nature as to require the presence of the member. This provision shall not be construed to cover absences for the purpose of nursing or caring for members of the immediate family not declared by the attending physician to be critically ill.

(3) Exposure to contagious diseases and subsequent determination by competent medical authority that such member's presence on duty might jeopardize the health of others.

(d) For each sick leave period claimed by the member, the member shall provide the fire chief with a certificate from the attending physician setting forth the nature and duration of any of the conditions which would entitle him to sick leave as provided in subsection (c) of this section. Failure to provide such certificate satisfactory to the fire chief shall result in the member's not being granted sick leave with pay, and may subject the member to discipline for an unexcused absence.

(e) The City Manager may, in his or her discretion and at the request of the Fire Chief, advance additional leave necessary to avoid substantial hardship to any member, provided that all other accrued vacation, sick and personal contingency leave shall have first been exhausted.

(f) The fire chief shall also have the right to investigate or cause to be investigated the alleged illness of any member and, for good cause shown, not only to deny sick leave but also to take proper disciplinary action against any feigner or abuser.

(g) In the event of an emergency, as declared by the mayor, an attending physician's excuse may be required for any days missed; and during the emergency, the mayor may suspend, in whole or in part, any sick leave or personal contingency leave as permitted by subsections (a) and (c) of this section.

(h) For purposes of this section, a medical provider shall include a licensed physician, surgeon, chiropractor, psychologist, or dentist.

Sec. 54-104. - Funeral leave with pay.

In case of the death of the spouse, child, mother, father, brother, sister, mother-in-law or father-in-law, or in the case of death of any other relative residing in the immediate household, the member shall be allowed one shift or three working days of funeral leave with regular pay. In case of the death of a sister-in-law, brother-in-law, daughter-in-law, son-in-law, grandparent, grandchild, aunt, uncle, nephew, niece or first cousin of the member or spouse, the member shall be allowed one day or working day of funeral leave with regular pay.

Sec. 54-105. - Legal holidays.

(a) The following days shall be regarded, treated and observed as legal holidays:

(1) January 1, New Year's Day;

(2) The third Monday of January, Martin Luther King's Birthday;

(3) The third Monday of February, Presidents' Day;

(4) The last Monday in May, Memorial Day;

(5) June 20, West Virginia Day;

(6) July 4, Independence Day;

(7) The first Monday of September, Labor Day;

(8) The second Monday of October, Columbus Day;

(9) November 11, Veterans Day;

(10) The fourth Thursday and Friday of November, Thanksgiving Day Holidays;

(11) December 25, Christmas Day;

(12) Any national, state or other election day throughout the district or municipality wherein the election is held, provided, that if a special or other election of a political subdivision other than the City of Charleston falls on a Saturday or Sunday, the City of Charleston may choose not to recognize the day of the election as a holiday if a majority of the City of Charleston City Council votes not to recognize the day of the election as a holiday; and

(13) All days which may be appointed or recommended by the mayor, the governor or the President of the United States as days of thanksgiving or for the general cessation of business.

When any of such days or dates falls on Saturday or Sunday, either the preceding Friday of the succeeding Monday shall be regarded, treated and observed as such legal holiday.

(b) Uniformed members on shift duty who are required to receive additional compensation for legal holidays under state law shall, upon the occurrence of a legal holiday, be paid for an extra day (i.e., 12 hours) at their regular rate of pay, regardless of whether the member is required to

work on the legal holiday or the legal holiday occurs on the member's regularly scheduled day off.

(c) Uniformed members on a 40-hour week who are required to work on a legal holiday shall, upon the occurrence of a legal holiday, be paid for an extra four hours at their regular rates of pay. If the legal holiday occurs on their regularly scheduled day off, they shall, upon the occurrence of a legal holiday, be allowed one working day of time off, which must be taken in the same calendar year in which it is accrued, and at such time as approved by the fire chief or his designee.

and that Section 54-106 of Chapter 54, Article II, Division 3, of the Code of the City of Charleston is hereby created, to read as follows:

"Sec 54-106 Daily and weekly duty hours; pay periods; calculation of overtime pay; trading assigned shifts.

(a) Members shall not be required to remain on duty in excess of one hundred twelve (112) hours during any fourteen (14) consecutive calendar days' period.

(b) Unless the members shall by a majority vote elect otherwise as provided by state law, shifts shall begin and end at 8:00 a.m.

(c) Members shall be paid their annual salary as earned with appropriate adjustments on a bi-weekly (14 consecutive calendar days' period) basis. Each bi-weekly pay period shall begin at 12 midnight prior to a shift that begins on a Sunday at 8:00 a.m.

(d) On and after January 1, 2012, and pursuant to state and federal law, the work period for calculating overtime for members assigned to shift work shall be a consecutive 28 calendar-day period coinciding with two consecutive 14 consecutive-day pay periods. Members shall be paid at the rate of one and one-half (1 ½) times their regular hourly rate for any time worked in excess of 212 hours within this 28-day period.

"(e) The Fire Chief may establish rules and regulations for the trading of assigned shifts, or portions thereof, provided that where one member substitutes for another, each member will be credited as if he or she had worked his or her normal work schedule for that shift with the effect that the hours worked shall be excluded in the calculation of the hours for which the substituting member would otherwise be entitled to overtime compensation under the law. The Fire Chief or a Shift Commander must approve any agreement between members to substitute shifts prior to the start of the shift in which the substitution will occur."

Secs. 54-107 – 54-140 Reserved."

All provisions, or any portions thereof, of the Code of the City of Charleston or of any applicable administrative rules or manuals, which are inconsistent with this Division, as established herein, are hereby repealed to the extent necessary to eliminate said inconsistency.

The question being on the passage of the Bill as amended. A roll call was taken and there were; yeas –26,nays – 2, absent - 0, as follows:
YEAS: Burka, Burton, Clowser, Davis, Deneault, Dodrill, Ealy, Haas, Harrison, Lane, Miller,Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets,

Snodgrass, Stajduhar, Talkington, Ware, Weintraub ,White, Mayor Jones.
NAYS: Kirk, Smith
ABSENT:
With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared Bill No. 7506 as amended, adopted.

REPORTS OF OFFICERS

1. Report of the City of Charleston, Municipal Court Financial Statements; November 2011. Received and Filed.

NEW BILLS

Introduced by Council member John Miller on December 5, 2011:
Bill No. 7507 - A Bill to establish Two Hour limited time parking tow away from 6:00 am to 5:00 pm., on the Easterly side of 57th Street S.E., from a point 70 feet north of MacCorkle Ave., S.E., to a point 150 feet north of MacCorkle Ave., S.E., and on the westerly side of 57th Street, SE. from a point 85 feet north of MacCorkle Avenue S.E., to a point 150 feet north of MacCorkle Avenue S.E., 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 Streets and Traffic.

Introduced by Council member John Miller on December 5, 2011:
Bill No. 7508 - A bill to repeal Ordinance No. 2753, passed by Council on November 17, 1980, relating to a two hour parking zone on 57th Street S.E., 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 fourteen, Article five, to conform therewith.
Refer to Streets and Traffic.

Introduced by Council members John Miller and Rick Burka on December 5, 2011:
Bill No. 7509 - A Bill to repeal Ordinance No. 3908, passed by Council on July 15, 1985, relating to a Permit Parking area on Noyes Avenue from 55th to 57th 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, Chapter one fourteen, Article five, to conform therewith.
Refer to Streets and Traffic Committee.

Introduced by Council member Sam Minardi on December 5, 2011:
Bill No. 7510: "A BILL to repeal Bill Number 7499, passed by Council on November 7, 2011, relating to the establishment of a No Parking Any Time Tow Away Zone on the southerly side of Sweetbrier Road, and to amend the Traffic Control Map and Traffic Control File, established by the Code of the City of Charleston, West Virginia, as amended, Chapter 114 - Traffic Ordinance, Article IV, Division 2, to conform herewith.
Refer to Streets and Traffic.

ROLL CALL

YEAS: Burka, Burton, Clowser, Davis, Deneault, Dodrill, Ealy, Haas, Harrison, Kirk, Lane, Miller,Minardi, Nichols, Persinger, Reishman, Richardson, Russell, Salisbury, Sheets, Smith, Snodgrass, Stajduhar, Talkington, Ware, Weintraub ,White, Mayor Jones.
ABSENT:

At 7:45 p.m., by a motion from Councilmember Harrison, Council adjourned until Monday, December 19, 2011, at 7:00 p.m.

_____
Danny Jones, Honorable Mayor

_____
James M. Reishman, City Clerk

AGENDA
CHARLESTON CITY COUNCIL
December 5, 2011 7:00 p.m.

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS

CLAIMS

MISCELLANEOUS RESOLUTIONS

TO READ AND DISPOSE OF COMMUNICATION

STREETS AND TRAFFIC

1. Bill No. 7504 – A Bill to amend and reenact Ordinance # 4577 passed by Council June 18, 1990 relating to a No Parking Anytime Tow Away zone on the North side of Kanawha Boulevard, East from a point 400 feet east of Ruffner Avenue to a point 454 feet east of Ruffner Avenue.

2. Bill No. 7505 - A Bill to amend and reenact Bill number 7314 passed by Council January 22, 2008 relating to a STOP intersection on Graff Lane at Quarry Ridge South requiring vehicles on Graff Lane to STOP at Quarry Ridge South.

3. Resolution No. 047-11 – A Resolution to endorse new traffic signal programs to improve pedestrian safety along Kanawha

FINANCE

1. Resolution No. 056-11—Budget Amendment No. 3—FY 2011-2012(Civic Center)

2. Resolution No. 057-11—Budget Amendment No. 6—FY 2011-2012 (General Fund)

3. Resolution No. 058-11—Supplementing Ordinance No. 7490 Relating to Issuance of Sewerage System Revenue Bonds, Series 2011A

4. Resolution No. 059-11—Authorizing the Mayor and/or City Manager to Submit an Intent-to-Apply Application to the Safe Routes to School Grant Program for John Adams Middle School

5. Resolution No. 060-11—Authorizing the Mayor and/or City Manager to Submit an Intent-to-Apply Application to the West Virginia Department of Transportation for Grant Funds to Support the Elk River Walkway Project

6. Resolution No. 061-11—Authorizing the Mayor and/or City Manager to Sign an Agreement with eCivis for a Grants Research and Grants Management Program ($31,500 over a three year period)

7. Purchase of Uninterruptable Power Supply Units for Information Systems Department ($16,230)

8. Bill No. 7506—Amending Chapter 54 of Municipal Code and Creating New Section 54-106 as it Relates to the Fire Department

REPORTS OF OFFICERS

NEW BILLS INTRODUCED

UNFINISHED BUSINESS OR MISCELLANEOUS BUSINESS

ROLL CALL

THE NEXT REGULAR MEETING OF COUNCIL WILL BE
Monday, December 19, 2011 at 7:00 p.m.

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

LEGAL ADVERTISING INVOICE

INVOICE DATE	09/19/11
ACCOUNT NBR	014243003
SALES REP ID	0074
INVOICE NBR	751471001

M

BILLED TO

JACKSON & KELLY
*****
PO BOX 553
CHARLESTON WV 25322 USA

Please return this portion with your payment. AMOUNT PAID: _____

Make checks payable to: Charleston Newspapers

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

INVOICE DATE	09/19/11
ACCOUNT NBR	014243003
SALES REP ID	0074
INVOICE NBR	751471001

Legal pricing is based upon 63 words per column inch.
Each successive insertion is discounted by 25% of the first insertion rate.
The Daily Mail rate is $.13 per word, the Charleston Gazette rate is $.14 per word, and the Metro Putnam rate is $.13 per word.

ISSUE DATE	AD TYPE	PUB	DESCRIPTION REFERENCE NBR PURCHASE ORDER #	AD NUMBER	AD SIZE TOTAL RUN	RATE	GROSS AMOUNT	NET AMOUNT
			751471004		11.75	8.19	96.23	
			LEGAL DISCOUNT 25%				24.06-	72.17
			TOTAL INVOICE AMOUNT					349.77

State of West Virginia

AFFIDAVIT OF PUBLICATION

I, Sandra Legg of
THE CHARLESTON GAZETTE,
THE DAILY MAIL,
do solemnly swear that the legal notice of:
Notice of Public Hearing
was duly published in said newspaper(s) at the stated price for the respective newspaper(s) and during the dates listed below:
09/09/11-09/16/11

OFFICIAL SEAL
Notary Public, State of West Virginia
MARY T PRILLAMAN
5508 Ohio Street
South Charleston, WV 25309
My commission expires April 12, 2021

Subscribed and sworn to before me this 20 day of September.

Mary T Prillaman
Notary Public of Kanawha County, West Virginia

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

LEGAL ADVERTISING INVOICE

INVOICE DATE	09/19/11
ACCOUNT NBR	014243003
SALES REP ID	0074
INVOICE NBR	751471001

M

BILLED TO

JACKSON & KELLY
*****
PO BOX 553
CHARLESTON WV 25322 USA

Please return this portion with your payment.

AMOUNT PAID: _____

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P.O. Box 2993
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Classified 348-4848
1-800-WVA-NEWS
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INVOICE DATE	09/19/11
ACCOUNT NBR	014243003
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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
09/09	LEGF	GZ	Notice of Public Hea	0475400	1X1175			
			751471001		11.75	8.82	103.64	103.64
09/09	LEGF	DM	Notice of Public Hea		1X1175			
			751471002		11.75	8.19	96.23	96.23
09/16	LEGR	GZ	Notice of Public Hea		1X1175			
			751471003		11.75	8.82	103.64	
			LEGAL DISCOUNT 25%				25.91-	77.73
09/16	LEGR	DM	Notice of Public Hea		1X1175			

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

I, _____ of

do solemnly swear that the legal notice of:

was duly published in said newspaper(s) at the stated price for the respective newspaper(s) and during the dates listed below:

Subscribed and sworn to before me this_____day of_____.

_____
Notary Public of Kanawha County, West Virginia

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 September 6, 2011, the Council of The City of Charleston, West Virginia (the "City") adopted an ordinance which, among other things:

1. Authorized the design, acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the City's existing sewerage system (the "System"), the permanent financing of such costs thereof through the issuance of not more than $30,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, in one or more series (the "Bonds").

2. Directed that the Bonds be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the continuation of the revenue fund and the disposition of the System revenues; provided for the payment of operating expenses of the System and debt service on the Bonds; directed the creation of a sinking fund and a reserve account for the Bonds and continuation of the renewal and replacement fund; and directed the creation of a bond construction trust fund and the disbursement of Bond proceeds.

4. Provided that the Bonds shall not be or constitute a corporate indebtedness of the City within the meaning of any statutory or constitutional limitations, but shall be payable solely from the Net Revenues of the System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the registered owners of the Bonds to such Net Revenues; provided certain conditions for the issuance of additional bonds.

5. Provided for insurance coverage on the Project and the System, enforcement of collection of fees, rates or other charges for the System and other covenants in favor of the registered owners; established the events of default and the remedies of the registered owners; and provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The City contemplates the issuance of the Bonds described in, and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of The City of Charleston at a regular meeting on September 19, 2011, 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 September 6, 2011, is on file with the City Clerk for review by interested persons at the City Hall during regular office hours, to-wit: 8:00 a.m. to 4:00 p.m., Monday through Friday.

/s/ James M. Reishman

City Clerk of
The City of Charleston,
West Virginic

(475.00)

NUMBER

AR-1

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF KANAWHA
THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A

No. AR-1 $25,877,009

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF CHARLESTON, a municipal corporation and political subdivision of the State of West Virginia, in Kanawha County of said State (the "City"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority "), or registered assigns, the sum of TWENTY-FIVE MILLION EIGHT HUNDRED SEVENTY-SEVEN THOUSAND NINE DOLLARS ($25,877,009), or such lesser amount as shall have been advanced to the City hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2013, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference, with interest on each installment at the rate of two percent (2%) per annum as set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Ordinance) on this Bond shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2013, as set forth on EXHIBIT B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of

public and private debts under the laws of the United States of America, at the office of the Paying Agent(as defined in the hereinafter described Ordinance). The interest on this Bond is payable by check or draft mailed to the registered owner hereof at the address as it appears on the books of the Registrar (as defined in the hereinafter described Ordinance) on the 15th day of the month preceding an interest payment date or by such other method as shall be mutually agreeable so long as the Authority is registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP") and as otherwise provided by the Loan Agreement dated December 13, 2011, among the Authority, the DEP and the City.

This Bond is issued (i) to pay the costs of design, acquisition and construction of certain extensions, additions, betterments and improvements to the existing sewerage system of the City (the "Project"); (ii) to fund a reserve account for this Bond; and (iii) to pay certain costs of issuance hereof and related costs. The existing sewerage system of the City, the Project and any further additions, betterments and improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"), Ordinance No. 4423 passed by the City on March 6, 1989, as supplemented by Ordinance No. 4506 passed by the City on November 6, 1989, Ordinance No.4954 passed by the City on May 3, 1993, Ordinance No. 6276 passed by the City on September 3, 1996, Ordinance No. 6349 passed by the City on June 2, 1997, Ordinance No. 6532 passed by the City on November 16, 1998, Ordinance No. 6544 passed by the City on February 1, 1999, Ordinance No. 6670 passed by the City on February 5, 2001,Ordinance No. 6777 passed by the City on March 19, 2001, Ordinance No. 6948 passed by the City on November 4, 2002, Ordinance No. 6977 passed by the City on May 19, 2003, Ordinance No. 7132 passed by the City on March 21, 2005, Ordinance No. 7490 passed by the City on September 6, 2011, and a Supplemental Resolution adopted by the City on December 5, 2011 (collectively, the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance. All undefined capitalized terms used herein shall have the same meaning as set forth in the Ordinance.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT WITH THE FIRST

LIEN BONDS AND SENIOR TO THE SECOND LIEN BONDS, ALL AS DEFINED IN THE ORDINANCE.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues as defined in the Ordinance, to be derived from the operation of the System, on a parity with the First Lien Bonds and senior to the Second Lien Bonds, moneys in the Reserve Account created under the Ordinance (the "Series 2011 A Bonds Reserve Account") and unexpended proceeds of this Bond. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 2011 A Bonds Reserve Account and unexpended proceeds of this Bond. Pursuant to the Ordinance, the City has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on this Bond and all obligations secured by a lien on or payable from such revenues on a parity with this Bond, including the Prior Bonds; provided however, that so long as there exists in the Series 2011 A Bonds Reserve Account an amount equal to the maximum amount of principal and interest which will become due on this Bond in the then current or any succeeding year and in the respective reserve accounts established for any obligations outstanding on a parity with this Bond, including the Prior Bonds, an amount equal to the requirement therefor, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of this Bond for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar, kept for that purpose at the office of the Registrar, by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

This Bond, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

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

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

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

NUMBER

AR-1

IN WITNESS WHEREOF, THE CITY OF CHARLESTON has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated December 13, 2011.

[SEAL]

SPECIMEN

Mayor

ATTEST:

SPECIMEN

City Clerk

NUMBER

AR-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2011 A Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: December 13, 2011.

UNITED BANK, INC., as Registrar

By _____
Its Authorized Officer

SPECIMEN

NUMBER

AR-1

EXHIBIT A

RECORD OF ADVANCES

SPECIMEN

AMOUNT	DATE	AMOUNT	DATE
(1) $1,621,017	December 13, 2011	(19) $	
(2) $		(20) $	
(3) $		(21) $	
(4) $		(22) $	
(5) $		(23) $	
(6) $		(24) $	
(7) $		(25) $	
(8) $		(26) $	
(9) $		(27) $	
(10) $		(28) $	
(11) $		(29) $	
(12) $		(30) $	
(13) $		(31) $	
(14) $		(32) $	
(15) $		(33) $	
(16) $		(34) $	
(17) $		(35) $	
(18) $		(36) $	

Total $_____

NUMBER

AR-1

SPECIMEN

EXHIBIT B

BOND DEBT SERVICE
Charleston Sanitary Board
CW SRF
2% Interest Rate
1% Administrative Fee, 20 years

Dated Date	12/13/2011
Delivery Date	12/13/2011

Period Ending	Principal	Coupon	Interest	Debt Service
12/1/2013	263,869	2.000%	129,385.05	393,254.05
3/1/2014	265,188	2.000%	128,065.70	393,253.70
6/1/2014	266,514	2.000%	126,739.76	393,253.76
9/1/2014	267,847	2.000%	125,407.19	393,254.19
12/1/2014	269,186	2.000%	124,067.96	393,253.96
3/1/2015	270,532	2.000%	122,722.03	393,254.03
6/1/2015	271,884	2.000%	121,369.37	393,253.37
9/1/2015	273,244	2.000%	120,009.95	393,253.95
12/1/2015	274,610	2.000%	118,643.73	393,253.73
3/1/2016	275,983	2.000%	117,270.68	393,253.68
6/1/2016	277,363	2.000%	115,890.76	393,253.76
9/1/2016	278,750	2.000%	114,503.95	393,253.95
12/1/2016	280,144	2.000%	113,110.20	393,254.20
3/1/2017	281,544	2.000%	111,709.48	393,253.48
6/1/2017	282,952	2.000%	110,301.76	393,253.76
9/1/2017	284,367	2.000%	108,887.00	393,254.00
12/1/2017	285,789	2.000%	107,465.16	393,254.16
3/1/2018	287,218	2.000%	106,036.22	393,254.22
6/1/2018	288,654	2.000%	104,600.13	393,254.13
9/1/2018	290,097	2.000%	103,156.86	393,253.86
12/1/2018	291,547	2.000%	101,706.37	393,253.37
3/1/2019	293,005	2.000%	100,248.64	393,253.64
6/1/2019	294,470	2.000%	98,783.61	393,253.61
9/1/2019	295,943	2.000%	97,311.26	393,254.26
12/1/2019	297,422	2.000%	95,831.55	393,253.55
3/1/2020	298,909	2.000%	94,344.44	393,253.44
6/1/2020	300,404	2.000%	92,849.89	393,253.89
9/1/2020	301,906	2.000%	91,347.87	393,253.87
12/1/2020	303,415	2.000%	89,838.34	393,253.34
3/1/2021	304,933	2.000%	88,321.27	393,254.27
6/1/2021	306,457	2.000%	86,796.60	393,253.60
9/1/2021	307,990	2.000%	85,264.32	393,254.32
12/1/2021	309,529	2.000%	83,724.37	393,253.37
3/1/2022	311,077	2.000%	82,176.72	393,253.72
6/1/2022	312,632	2.000%	80,621.34	393,253.34
9/1/2022	314,196	2.000%	79,058.18	393,254.18
12/1/2022	315,767	2.000%	77,487.20	393,254.20

NUMBER

AR-1

SPECIMEN

BOND DEBT SERVICE
Charleston Sanitary Board
CWSRF
13-Dec-11

Period Ending	Principal	Coupon	Interest	Debt Service
3/1/2023	317,345	2.000%	75,908.36	393,253.36
6/1/2023	318,932	2.000%	74,321.64	393,253.64
9/1/2023	320,527	2.000%	72,726.98	393,253.98
12/1/2023	322,129	2.000%	71,124.34	393,253.34
3/1/2024	323,740	2.000%	69,513.70	393,253.70
6/1/2024	325,359	2.000%	67,895.00	393,254.00
9/1/2024	326,986	2.000%	66,268.20	393,254.20
12/1/2024	328,621	2.000%	64,633.27	393,254.27
3/1/2025	330,264	2.000%	62,990.17	393,254.17
6/1/2025	331,915	2.000%	61,338.85	393,253.85
9/1/2025	333,575	2.000%	59,679.27	393,254.27
12/1/2025	335,242	2.000%	58,011.40	393,253.40
3/1/2026	336,919	2.000%	56,335.19	393,254.19
6/1/2026	338,603	2.000%	54,650.59	393,253.59
9/1/2026	340,296	2.000%	52,957.58	393,253.58
12/1/2026	341,998	2.000%	51,256.10	393,254.10
3/1/2027	343,708	2.000%	49,546.11	393,254.11
6/1/2027	345,426	2.000%	47,827.57	393,253.57
9/1/2027	347,153	2.000%	46,100.44	393,253.44
12/1/2027	348,889	2.000%	44,364.67	393,253.67
3/1/2028	350,634	2.000%	42,620.23	393,254.23
6/1/2028	352,387	2.000%	40,867.06	393,254.06
9/1/2028	354,149	2.000%	39,105.12	393,254.12
12/1/2028	355,919	2.000%	37,334.38	393,253.38
3/1/2029	357,699	2.000%	35,554.78	393,253.78
6/1/2029	359,488	2.000%	33,766.29	393,254.29
9/1/2029	361,285	2.000%	31,968.85	393,253.85
12/1/2029	363,091	2.000%	30,162.42	393,253.42
3/1/2030	364,907	2.000%	28,346.97	393,253.97
6/1/2030	366,731	2.000%	26,522.43	393,253.43
9/1/2030	368,565	2.000%	24,688.78	393,253.78
12/1/2030	370,408	2.000%	22,845.95	393,253.95
3/1/2031	372,260	2.000%	20,993.91	393,253.91
6/1/2031	374,121	2.000%	19,132.61	393,253.61
9/1/2031	375,992	2.000%	17,262.01	393,254.01
12/1/2031	377,872	2.000%	15,382.05	393,254.05
3/1/2032	379,761	2.000%	13,492.69	393,253.69
6/1/2032	381,660	2.000%	11,593.88	393,253.88
9/1/2032	383,568	2.000%	9,685.58	393,253.58
12/1/2032	385,486	2.000%	7,767.74	393,253.74
3/1/2033	387,414	2.000%	5,840.31	393,254.31
6/1/2033	389,351	2.000%	3,903.24	393,254.24
9/1/2033	391,297	2.000%	1,956.49	393,253.49
	25,877,009		5,583,298.11	31,460,307.11 *

*Plus a Quarterly Administrative fee of $34,895.62 for a total administrative expense of $2,791,649.60

NUMBER

AR-1

<u>Assignment</u>

SPECIMEN

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said City with full power of substitution in the premises.

Dated: _____, ___.

In the presence of:

_____

BOND REGISTER

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

Bond Number	Principal Amount	Date of Bond
No. AR-1	$25,877,009	December 13, 2011

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:	Signature of Registrar:
West Virginia Water Development Authority 180 Association Drive Charleston, WV 25311	UNITED BANK, INC. Authorized Representative

WEST VIRGINIA
Water Development Authority
Celebrating 36 Years of Service 1974 - 2010

2.12

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

CONSENT TO ISSUANCE OF PARITY BONDS

In reliance upon a certificate of Grigoraci, Trainer, Wright & Paterno, certified public accountants and Jackson Kelly PLLC, bond counsel, stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program) (the "Bonds"), in the original principal amount of $25,877,009, by The City of Charleston (the "Issuer"), under the terms of the Bond Ordinance authorizing the Bonds, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Sewer Revenue Bonds, Series 1989 A, Sewer Revenue Bonds, Series 1989 C, Sewerage System Revenue Bonds, 1993 Series A, Sewerage System Revenue Bonds, Series 1996 A, Sewerage System Revenue Bonds, Series 1996 B, Sewerage System Revenue Bonds, Series 1997 A, Sewerage System Revenue Bonds, Series 1997 B, Sewerage System Revenue Bonds, 1998 Series A, Sewerage System Revenue Bonds, 1999 Series A, Sewerage System Revenue Bonds, Series 2001 A, Sewerage System Revenue Bonds, 2001 Series B, Sewerage System Refunding Revenue Bonds, Series 2002 A, Sewerage System Refunding Revenue Bonds, Series 2002 B, Sewerage System Revenue Bonds, Series 2004 A, Sewerage System Revenue Bonds, Series 2005 A and Sewerage System Revenue Bonds, Series 2008 A, and senior and prior with respect to liens, pledge and source of and security for payment to the Issuer's Supplemental Sewer Revenue Bonds, Series 1989 B, Supplemental Sewer Revenue Bonds, Series 1989 D, Sewerage System Revenue Bonds, 1999 Series B, Sewerage System Revenue Bonds, 2001 Series C, and Sewerage System Revenue Bonds, Series 2005 B-1 and Sewerage System Revenue Bonds, Series 2005 B-2 (collectively, the "Prior Bonds").

WITNESS my signature on this 13th day of December, 2011.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

Sheena Chadwell
Authorized Representative

180 Association Drive, Charleston, WV 25311-1217
Phone (304) 558-3612 / fax (304) 558-0299
www.wvwda.org

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. RATES
7. INCUMBENCY AND OFFICIAL NAME
8. MEETINGS
9. INSURANCE
10. LOAN AGREEMENT
11. SPECIMEN BOND
12. BOND PROCEEDS
13. LAND AND RIGHTS-OF-WAY
14. PUBLIC SERVICE COMMISSION ORDER
15. CONFLICTS OF INTEREST
16. PROCUREMENT OF ENGINEERING SERVICES
17. VERIFICATION OF SCHEDULE A
18. CLEAN WATER ACT
19. COUNTERPARTS

We, the undersigned MAYOR and the undersigned CITY CLERK of The City of Charleston in Kanawha County, West Virginia (the "Issuer"), and the undersigned CITY ATTORNEY for the Issuer, hereby certify in connection with The City of Charleston Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), numbered AR-1, dated the date hereof, in the principal amount of $25,877,009 (the "Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance duly passed by the Issuer on September 6, 2011, effective September 19, 2011, the Supplemental Resolution duly adopted by the Issuer on December 5, 2011 (collectively, the "Ordinance"), and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection ("DEP"), dated June 26, 2011 (the "Loan Agreement").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the authorization, issuance, sale and delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members or officers of the Issuer, the Governing Body, or the Sanitary Board to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia, 1931, as amended, which bids remain in full force and effect. The Issuer has received the Drug Free Workplace affidavits from the successful bidders required by Chapter 21, Article 1D of the West Virginia Code of 1931, as amended.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the Loan Agreement. The Issuer has met all conditions set forth in the Loan Agreement and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Bonds are issued on a parity with the First Lien Bonds, and senior and prior to the Second Lien Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has obtained (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the First Lien Bonds are met; and (ii) the written consent of the registered owners of the Prior Bonds (other than the Series 2002 A Bonds and the Series 2002 B Bonds) to the issuance of the Bonds on a parity with the First Lien Bonds, and senior and prior to the Second Lien Bonds. No written consent is required from the registered owners of the Series 2002 A Bonds and the Series 2002 B Bonds. Other than the Prior Bonds, there are no other outstanding bonds or

obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all the terms and provisions of the Prior Bonds and the Prior Ordinances.

5. SIGNATURES AND DELIVERY: The undersigned Mayor and City Clerk are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Mayor did officially sign all of the Bonds, consisting upon original issuance of a single Bond, dated the date hereof, by his manual signature; the undersigned City Clerk did officially cause the seal of the Issuer to be affixed upon the Bonds and to be attested by his manual signature; and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement.

6. RATES: The Issuer has duly enacted a sewer rate ordinance on February 19, 2008, setting forth the rates and charges for the services of the System. The Issuer has complied with all requirements of the Act and the Public Service Commission of West Virginia (the "PSC") to make the rates valid and effective. The time for appeal of such rate ordinance has expired and there has been no appeal thereof and such rates are in full force and effect.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "The City of Charleston." The Issuer is a municipal corporation of the State of West Virginia in Kanawha County of said State. The Governing Body of the Issuer is its Council, consisting of 27 Council members and the Mayor, all duly elected or appointed, qualified and acting, whose names and dates of commencement and termination of their current terms of office, along with the appointed City Clerk, are listed below:

Office	Name	Date Of Commencement Of Office	Date Of Termination Of Office
Mayor	Danny Jones	July 1, 2011	June 30, 2015
City Clerk	James M. Reishman	July 1, 2011	June 30, 2015
Council Member	Bob Haas	July 1, 2011	June 30, 2015
Council Member	William Kirk	July 1, 2011	June 30, 2015
Council Member	James Lanham	July 1, 2011	June 30, 2015
Council Member	Joe Denault	July 1, 2011	June 30, 2015
Council Member	Mike Nichols	July 1, 2011	June 30, 2015

Council Member	Edward Talkington	July 1, 2011	June 30, 2015
Council Member	Mike Stajduhar	July 1, 2011	June 30, 2015
Council Member	Bob White	July 1, 2011	June 30, 2015
Council Member	Cubert Smith	July 1, 2011	June 30, 2015
Council Member	Robert Sheets	July 1, 2011	June 30, 2015
Council Member	Marc R. Weintraub	July 1, 2011	June 30, 2015
Council Member	Shannon Snodgrass	July 1, 2011	June 30, 2015
Council Member	Susie Salisbury	July 1, 2011	June 30, 2015
Council Member	Jack E. Harrison	July 1, 2011	June 30, 2015
Council Member	Courtney Persinger	July 1, 2011	June 30, 2015
Council Member	Samuel Minardi	July 1, 2011	June 30, 2015
Council Member	Bobby Reishman	July 1, 2011	June 30, 2015
Council Member	John H. Miller, Jr.	July 1, 2011	June 30, 2015
Council Member	Rick Burka	July 1, 2011	June 30, 2015
Council Member	Brent Burton	July 1, 2011	June 30, 2015
Council Member	Mike Clowser	July 1, 2011	June 30, 2015
Council Member	Mary Jean Davis	July 1, 2011	June 30, 2015
Council Member	Tom Lane	July 1, 2011	June 30, 2015
Council Member	Kasey Russell	July 1, 2011	June 30, 2015
Council Member	Andrew Richardson	July 1, 2011	June 30, 2015
Council Member	Jerry L. Ware	July 1, 2011	June 30, 2015
Council Member	Chris Doddrill	July 1, 2011	June 30, 2015

The names of the duly appointed, qualified and acting members of the Sanitary Board of the Issuer are as follows:

Chairman:	Danny Jones, Mayor
Member:	John Tinney, Jr.
Member:	Sam Bowling, P.E.

The duly appointed and acting City Attorney for the Issuer is Paul Ellis, Esquire, Charleston, West Virginia.

8. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction, operation and financing of the Project or the System were authorized or adopted at meetings of the Governing Body duly and regularly or specifically called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes including Chapter 6, Article 9A of the Code of West Virginia, 1931, as amended, and a quorum of duly elected or appointed,

qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. INSURANCE: The Issuer will maintain or, as appropriate, will require all contractors to maintain worker's compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Ordinance and the Loan Agreement. All insurance for the System required by the Ordinance and the Loan Agreement is in full force and effect.

10. LOAN AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statements of material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Loan Agreement, which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading; and (iv) the Issuer is in compliance with the Loan Agreement. The Issuer will serve the additional customers of the location(s) as set forth in the Certificate of Engineer. The Issuer will not reduce the amount of additional customers served by the Project without the prior written approval of the Authority. Following completion of the Project, the Issuer will certify to the Authority the number of customers added to the System.

11. SPECIMEN BOND: Attached hereto as Exhibit A is a specimen of the Bond which is identical in all respects with the Bond this day delivered to the Authority and being substantially in the form prescribed in the Ordinance.

12. BOND PROCEEDS: On the date hereof, the Issuer received $1,621,017 from the Authority and the DEP, being a portion of the principal amount of the Bonds and more than a de minimus amount of the proceeds of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

13. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions

which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds.

14. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Recommended Decision of the Administrative Law Judge entered on February 17, 2011, as made final by the PSC on March 9, 2011, in Case No. 10-1732-S-CN, among other things, either granting to the Issuer a certificate of public convenience and necessity for the Project or waiving the certificate, and approving the financing for the Project. The time for appeal of both PSC orders has expired without any appeal. Both orders remain in full force and effect.

15. CONFLICTS OF INTEREST: No member, officer or employee of the Issuer or the Sanitary Board has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the Ordinance, and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

16. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied with all the requirements of Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended, in the procurement of the engineering services of the Consulting Engineer.

17. VERIFICATION OF SCHEDULE B: The final amended Schedule B attached to the Certificate of Consulting Engineer, with the signature of the Mayor and the Consulting Engineer, accurately represents the estimated costs of the Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Bonds.

18. CLEAN WATER ACT: The Project as described in the Ordinance complies with Sections 208 and 303(e) of the Clean Water Act.

19. COUNTERPARTS: This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

The certifications herein of the City Attorney are limited to Paragraphs 1, 5, 7, 8 and 15 and with respect to the enactment of the rate ordinance under Paragraph 6.

WITNESS our signatures and the official corporate seal of The City of Charleston, West Virginia, on this 13th day of December, 2011.

[SEAL]

Signature	Official Title
	Mayor
	City Clerk
	City Attorney

EXHIBIT A

See Specimen Bond (Tab No. 15)

THE CITY OF CHARLESTON 3.2
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

CERTIFICATE AS TO USE OF PROCEEDS

On this 13th day of December, 2011, the undersigned Mayor of The City of Charleston in Kanawha County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of $25,877,009 Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), of the Issuer, dated December 13, 2011 (the "Bonds" or, the "Series 2011 A Bonds"), hereby certify as follows:

1. I am one of the officers of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance duly passed by the Issuer on September 6, 2011, effective September 19, 2011, and Supplemental Resolution adopted on December 5, 2011 (the "Ordinance"), authorizing the Bonds.

2. This certificate may be relied upon as the certificate of the Issuer.

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on December 13, 2011, the date on which the Bonds are being physically delivered in exchange for a portion of the principal amount of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. The Series 2011 A Bonds were sold on December 13, 2011, to the West Virginia Water Development Authority (the "Authority"), pursuant to a loan agreement dated December 13, 2011, by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), for an aggregate purchase price of $25,877,009 (100% of par), at which time, the Issuer received $1,621,017 from the Authority and the DEP, being the first advance of the principal amount of the Series 2011 A Bonds. No accrued interest has been or will be paid on the Bonds. The balance of the respective principal amounts of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

5. The Bonds are being delivered simultaneously with the delivery of this Certificate and are issued for the purposes of (i) permanently financing a portion of the costs of acquisition and construction of certain improvements and extensions to the

existing public sewer facilities of the Issuer (the "Project"); (ii) funding a reserve account; and (iii) paying certain costs of issuance of the Bonds and related costs.

6. The Issuer has previously entered into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds for the acquisition and construction of the Project, constituting a substantial binding commitment. The acquisition and construction of the Project and the allocation of the net sale proceeds of the Bonds to expenditures of the Project shall commence immediately and shall proceed with due diligence to completion, and with the exception of proceeds deposited in the Reserve Accounts for the Bonds, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before March 1, 2013. The acquisition and construction of the Project is expected to be completed by March 1, 2013.

7. The total cost of the Project is estimated at $25,877,009. Sources and uses of funds for the Project are as follows:

SOURCES

Proceeds of Series 2011 A Bonds	$25,877,009
Total Sources	$25,877,009

USES

Costs of the Project	$24,255,992
Deposit into Reserve Fund	$ 1,573,017
Costs of Issuance	$ 48,000
Total Uses	$25,877,009

8. Pursuant to Article V of the Ordinance, the following special funds or accounts have been created:

(1) Revenue Fund;

(2) Renewal and Replacement Fund;

(3) Series 2011 A Bonds Construction Trust Fund;

(4) Series 2011 A Bonds Sinking Fund; and

(5) Series 2011 A Bonds Reserve Account.

9. Pursuant to Article VI of the Ordinance, the proceeds of the Bonds will be deposited as follows:

(1) Series 2011 A Bonds proceeds in the amount of $1,573,017 will be deposited in the Series 2011 A Bonds Reserve Account.

(2) The balance of the proceeds of the Bonds will be deposited in the Series 2011 A Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of the Project, including costs of issuance of the Bonds and related costs.

10. Moneys held in the Series 2011 A Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2011 A Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2011 A Bonds Reserve Account (if fully funded) shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2011 A Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2011 A Bonds, respectively, and then to the next ensuing principal payment due thereon, all on a pro rata basis.

11. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 24 months of the date hereof.

12. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

13. With the exception of the amount deposited in the Series 2011 A Bonds Reserve Account all of the proceeds of the Series 2011 A Bonds will be expended on the Project within 20 months from the date of issuance thereof.

14. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

15. The amount designated as costs of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

16. All property financed with the proceeds of the Bonds will be owned and held by (or on behalf of) a qualified governmental unit.

17. No proceeds of the Bonds will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

18. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue. The Issuer covenants that it shall maintain thorough and accurate accounting records, in conformance with generally accepted accounting principles, relative to the proceeds of the Bonds so that use of proceeds from each series of the Bonds can be accounted for.

19. The Issuer shall use the Bond proceeds solely for the costs of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

20. The Bonds are not federally guaranteed.

21. The Issuer has retained the right to amend the Ordinance authorizing the issuance of the Bonds if such amendment is necessary to assure that the Bonds remain governmental or public purpose bonds.

22. The Issuer has either (a) funded the Series 2011 A Bonds Reserve Account at the maximum amount of principal and interest, if any, which will mature and become due on the Series 2011 A Bonds in the then current or any succeeding year with the proceeds of the Series 2011 A Bonds, or (b) created the Series 2011 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2011 A Bonds Reserve Account hold an amount equal to the maximum amount of principal and interest, if any, which will mature and become due on the Series 2011 A Bonds in the then current or any succeeding year. Moneys in the Series 2011 A Bonds Reserve Account and the Series 2011 A Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2011 A Bonds and will not be available to pay costs of the Project.

23. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with the Bonds and (c) will be paid out of substantially the same sources of funds or will have substantially the same claim to be paid out of substantially the same sources of funds as the Bonds.

24. 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.

25. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds, rebates and rebate calculations.

26. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS my signature as of the date first written above.

Mayor

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

CERTIFICATE OF CITY CLERK AS TO TRUTH
AND ACCURACY OF DOCUMENTS DELIVERED

The undersigned duly elected City Clerk of The City of Charleston, West Virginia (the "Issuer"), hereby certifies that the copies of the following documents being delivered in connection with the closing of the sale of The City of Charleston Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program) (the "Bonds") are, as of the date hereof, true, complete and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted, enacted or entered by the Council of the Issuer, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

1. Charter.

2. Oaths of Office of Mayor, City Clerk and Council Members.

3. Ordinance Creating Sanitary Board.

4. Oaths of Office of Sanitary Board Members.

5. Public Service Commission Order.

6. Infrastructure Council Approval Letter.

7. Loan Agreement.

8. Rate Ordinance.

9. Minutes of Council Meetings regarding All Readings and Public Hearing of the Rate Ordinance.

10. Affidavit of Publication of the Rate Ordinance and Notice of Public Hearing.

11. Petition of Sanitary Board.

12. Bond Ordinance.

13. Supplemental Resolution.

14. Minutes of Council Meetings regarding All Readings and Public Hearing of the Bond Ordinance and Adoption of the Supplemental Resolution.

15. Affidavit of Publication of the Notice of Public Hearing and Abstract of Bond Ordinance.

16 WDA Consent to Issuance of Parity Bonds.

17. NPDES Permit.

18. Evidence of Insurance.

[The rest of this page is intentionally left blank.]

WITNESS my signature and the official seal of The City of Charleston, West Virginia, on this 13th day of December, 2011.

City Clerk

[SEAL]

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

CERTIFICATE OF CONSULTING ENGINEER

I, Craig D. Richards, Registered Professional Engineer, West Virginia License No. 10358, of Burgess & Niple Inc., Consulting Engineer, Parkersburg, West Virginia, hereby certify as follows:

1. My firm is the engineer for the planning, design, acquisition and construction of certain additions, betterments and improvements (the "Project") to the existing sewerage system (the "System") of The City of Charleston (the "Issuer"), to be constructed primarily in Kanawha County, West Virginia, which acquisition and construction are being permanently financed by the above-captioned bonds (the "Bonds") of the Issuer. All capitalized words used herein and not defined herein shall have the same meaning set forth in the Bond Ordinance passed by the Issuer on September 6, 2011, effective September 19, 2011, a Supplemental Resolution adopted December 5, 2011, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection ("DEP"), dated December 13, 2011 (the "Loan Agreement").

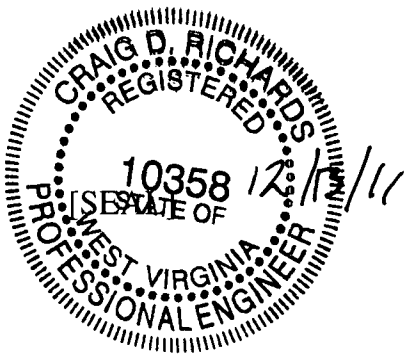
2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; (ii) funding a reserve account for the Bonds; and (iii) paying costs of issuance and related costs.

3. To the best of my knowledge, information and belief (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 25 years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B attached hereto as Exhibit A, all successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to

the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) in reliance upon the certificate of Grigoraci, Trainer, Wright & Paterno, Certified Public Accountants, of even date herewith, as of the effective date thereof, the rates and charges for the System as enacted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; (xi) attached hereto as Exhibit A is the final amended "Schedule B - Total Cost of Project, Sources of Funds and Cost of Financing" for the Project; and (xii) all contractors to be awarded contracts for the construction of the Project have submitted affidavits indicating such contractor has a drug free workplace plan pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, as amended.

4. The Project will serve no new customers.

WITNESS my signature and seal on this 13th day of December, 2011.



[SEAL]

Burgess & Niple, Inc

Craig D. Richards, P.E.
West Virginia License No. 10358

{C2061520.1}

SCHEDULE B

NAME OF GOVERNMENTAL AGENCY: The Sanitary Board of the City of Charleston

ESTIMATED TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING

			A. Cost of Project	
1.	Construction		$ 17,797,920.00	
	a. Contract 10-6	$ 4,756,973.00		
	b. Contract 10-7	$ 5,897,470.00		
	c. Contract 10-8	$ 5,160,622.00		
	d. Contract 10-9	$ 1,982,855.00		
2.	Technical Services		$ 4,775,742.00	
3.	Legal and Fiscal		$ 575,000.00	
	a. Rights-of-Way (Legal)	$ 550,000.00		
	b. PSC Attorney	$ 25,000.00		
4.	Administrative		$ -	
5.	Site and Other Lands		$ -	
6.	Fac. Plan/Design or Other Loan Repayment (Specify Type: _____)		$ -	
7.	Interim Financing Costs		$ -	
8.	Contingency (5% of construction		$ 882,330.00	
9.	Miscellaneous		$ 225,000.00	
	a. Appraisal Services	$ 50,000.00		
	b. Easement Acquisition (Right-of-Way Agent)	$ 175,000.00		
10.	Total of Lines 1 Through 9			$ 24,255,992.00
			B. Sources of Funds	
11.	Federal Grants		$ -	
	(Specify Sources)		$ -	
12.	State Grants		$ -	
	(Specify Sources)		$ -	
13.	Other Grants		$ -	
	(Specify Sources)		$ -	
14.	Any Other Source		$ -	
	(Specify)		$ -	
15	Total of Lines 11 Through 14			$ -
16.	Net Proceeds Required from Bond Issue (Line 10 Minus Line 15)			$24,255,992.00
			C. Cost of Financing	
17.	Bond Counsel		$ 47,500.00	
18.	Registrar Fee		$ 500.00	
19.	Funded Reserve Account		$ 1,573,017.00	
20.	Total Cost of Financing (Lines 17, 18 & 19)			$ 1,621,017.00
21.	Size of Bond Issue (Line 16 plus Line 20)			$25,877,009.00

Signature of Authorized Representative

Date: 12-13-11

Signature of Consulting Engineer

Date: 12-13-11

{C2203191.XLSX.1}

GRIGORACI, PATERNO & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS
(A PARTNERSHIP OF ACCOUNTING CORPORATIONS)

608 TENNESSEE AVENUE
CHARLESTON, WV 25302
(304) 343-5511
FAX: (304) 343-5514
www.gpa-cpas.com

December 13, 2011

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

Ladies and Gentlemen:

We have reviewed the sewer service rates of The City of Charleston as set forth in Rate Ordinance No. 7320 (the "Issuer"), enacted by the Issuer on February 19, 2008, and the projected operating expenses and anticipated customer usage provided by the Charleston Sanitary Board. It is our opinion that such rates are adequate (i) to provide for all operating expenses of the sewerage system of the Issuer (the "System"), and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for the payment of principal of and interest on the Issuer's $25,877,009 Sewerage System Revenue Bonds, Series 2011 A (the "Series 2011 A Bonds") at a 2% interest rate and a 20 year term and all other obligations secured by or payable from revenues of the System on a parity with or junior to the Series 2011 A Bonds, including the Issuer's Sewer Revenue Bonds, Series 1989 A, Sewer Revenue Bonds, Series 1989 C, Sewerage System Revenue Bonds, 1993 Series A, Sewerage System Revenue Bonds, Series 1996 A, Sewerage System Revenue Bonds, Series 1996 B, Sewerage System Revenue Bonds, Series 1997 A, Sewerage System Revenue Bonds, Series 1997 B, Sewerage System Revenue Bonds, 1998 Series A, Sewerage System Revenue Bonds, 1999 Series A, Sewerage System Revenue Bonds, Series 2001 A, Sewerage

System Revenue Bonds, 2001 Series B, Sewerage System Refunding Revenue Bonds, Series 2002 A, Sewerage System Refunding Revenue Bonds, Series 2002 B, Supplemental Sewer Revenue Bonds, Series 1989 B, Supplemental Sewer Revenue Bonds, Series 1989 D, Sewerage System Revenue Bonds, 1999 Series B, Sewerage System Revenue Bonds, 2001 Series C, Sewerage System Revenue Bonds, Series 2004 A, Sewerage System Revenue Bonds, Series 2005 A, Sewerage System Revenue Bonds, Series 2005 B-1, Sewerage System Revenue Bonds, Series 2005 B-2 , and Sewerage System Revenue Bonds, Series 2008 A (collectively, the "Prior Bonds").

It is further our opinion that the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Series 2011 A Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Series 2011 A Bonds, will not be less than 115% of the maximum annual amount which will mature and become due in any succeeding year for principal of and interest on the Prior Bonds and the Series 2011 A Bonds.

Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance authorizing the Series 2011 A Bonds.

Very truly yours,

Grigoraci, Paterno & Associates

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

RECEIPT FOR BONDS

The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, hereby certifies as follows:

1. On the 13th day of December, 2011, in Charleston, West Virginia, the Authority received the entire original issue of $25,877,009 in aggregate principal amount of the Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), of The City of Charleston (the "Issuer"), dated December 13, 2011, issued in the form of one bond, fully registered to the Authority, and numbered AR-1 (the "Bonds").

2. At the time of such receipt of the Bonds, they had been executed by the Mayor of the Issuer and attested by the City Clerk of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon the Bonds.

WITNESS my signature on this 13th day of December, 2011.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

Sheena Chadwell
Authorized Representative

THE CITY OF CHARLESTON 3.7
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

RECEIPT FOR BOND PROCEEDS

The undersigned Mayor of The City of Charleston (the "Issuer"), for and on behalf of the Issuer, hereby certifies as follows:

On the 13th day of December, 2011, the Issuer received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), as the original purchaser of the $25,877,009 The City of Charleston Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), dated December 13, 2011 (the "Bonds"), of $1,621,017, being a portion of the principal amount of the Bonds. The Issuer understands that the remaining proceeds of the Bonds will be advanced to the Issuer from time to time as construction proceeds to completion.

WITNESS my signature on this 13th day of December, 2011.

THE CITY OF CHARLESTON

Mayor

THE CITY OF CHARLESTON 3.8
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

REQUEST AND AUTHORIZATION TO
AUTHENTICATE AND DELIVER THE BONDS

United Bank, Inc., as Registrar
Charleston, West Virginia

Ladies and Gentlemen:

We herewith hand to you, duly executed, the $25,877,009 Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), in the form of one bond, numbered AR-1, dated December 13, 2011 (the "Bonds"), of The City of Charleston, West Virginia (the "Issuer"), authorized to be issued under and pursuant to a Bond Ordinance duly passed by the Issuer on September 6, 2011, effective September 19, 2011, and a Supplemental Resolution duly adopted by the Issuer on December 5, 2011.

You are hereby requested and authorized to register, authenticate and deliver the Bonds on behalf of the Issuer to the West Virginia Water Development Authority.

WITNESS my signature this 13th day of December, 2011.

THE CITY OF CHARLESTON

Mayor

(SEAL)

Attest:

City Clerk

{C2061543.1}

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 13th day of December, 2011, 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 $25,877,009 Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program) (the "Bonds"), in the form of one bond, numbered AR-1, in fully registered form, pursuant to a Bond Ordinance duly passed by the Issuer on September 6, 2011, effective September 19, 2011, and a Supplemental Resolution duly adopted December 5, 2011 (collectively, the "Ordinance");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Ordinance, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Ordinance provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Ordinance and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Ordinance and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exclusion of interest, if any, on the Bonds from gross income for federal income tax purposes, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or

similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Ordinance with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Ordinance, the terms of the Ordinance shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Ordinance will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective address:

ISSUER:

The City of Charleston
P.O. Box 2749
Charleston, WV 25330
Attention: Mayor

REGISTRAR:

United Bank, Inc.
P.O. Box 393
Charleston, WV 25322
Attention: Corporate Trust Department

The Issuer and the Registrar shall notify the other in writing of any change of address.

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Ordinance.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the date first above-written.

THE CITY OF CHARLESTON

Mayor

UNITED BANK, INC.

Authorized Officer

EXHIBIT A

See Bond Ordinance (Tab No. 11)
See Supplemental Resolution (Tab No. 12)

THE CITY OF CHARLESTON 3.10
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

CERTIFICATE OF REGISTRATION OF BONDS

UNITED BANK, INC., Charleston, West Virginia, as Registrar (the "Registrar"), hereby certifies that on the date hereof, the single, fully registered Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), of The City of Charleston, West Virginia (the "Issuer"), dated December 13, 2011, in the principal amount of $25,877,009, and numbered AR-1, was registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature on this 13th day of December, 2011.

UNITED BANK, INC., as Registrar

Authorized Officer

THE CITY OF CHARLESTON
SEWERAGE SYSTEM REVENUE BONDS, SERIES 2011 A
(WEST VIRGINIA CWSRF PROGRAM)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

JPMORGAN CHASE BANK, NA, Charleston, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of The City of Charleston, West Virginia (the "Issuer"), passed by the Issuer on September 6, 2011, effective September 19, 2011, and a Supplemental Resolution adopted by the Issuer on December 5, 2011 (collectively, the "Ordinance"), authorizing the issuance of The City of Charleston Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), in the aggregate principal amount of $25,877,009, dated December 13, 2011, and agrees to serve as Depository Bank for the Revenue Fund all as set forth in the Ordinance.

WITNESS my signature on this 13th day of December, 2011.

JPMORGAN CHASE BANK, NA

Authorized Officer

WEST VIRGINIA MUNICIPAL BOND COMMISSION
Suite 401
1207 Quarrier Street, Charleston, WV 25301
(304) 558-3971

3.12
NEW ISSUE REPORT FORM
Date of Report: December 13, 2011

ISSUE: The City of Charleston Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program)

ADDRESS: P.O. Box 2749, Charleston, WV 25330 COUNTY: Kanawha

PURPOSE OF ISSUE: New Money X
Refunding ___ Refunds issue(s) dated: _____

ISSUE DATE: December 13, 2011 CLOSING DATE: December 13, 2011

ISSUE AMOUNT: $25,877,009 RATE: 2%; Administrative Fee: 1%

1st DEBT SERVICE DUE: 12/1/2013 1st PRINCIPAL DUE: 12/1/2013

1st DEBT SERVICE AMOUNT: $ _____ PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC
Contact Person: Samme L. Gee, Esquire
Phone: (304) 340-1318

UNDERWRITERS COUNSEL: Kauffelt & Kauffelt
Contact Person: Mark Kauffelt, Esquire
Phone: (304) 345-1272

CLOSING BANK: JPMorgan Chase Bank, NA
Contact Person: John Copenhaver
Phone: (304) 348-1113

ESCROW TRUSTEE: _____
Contact Person: _____
Phone: _____

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Crystal Sanders
Position: Finance Manager
Phone: (304) 348-1084
Email: csanders@csbwv.com

OTHER: WVDEP
Contact Person: Rosalie Brodersen
Function: Program Manager
Phone: (304) 926-0449 ext. 1608

DEPOSITS TO MBC AT CLOSE: _____
_____
By _____ Wire X
_____ Check _____

Accrued Interest: $ _____
Capitalized Interest: $ _____
Reserve Account: $1,573,017
Other: _____ $ _____

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By _____ Wire _____ To Escrow Trustee: $ _____
_____ Check _____ To Issuer: $ _____
_____ IGT _____ To Cons.Invest.Fund $ _____
_____ To Other: _____ $ _____

NOTES: Reserve Account will be funded at closing.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
Documents Required: _____
Transfers Required: _____

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
601 57th STREET SE
CHARLESTON, WV 25304-2345
GENERAL
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WATER POLLUTION CONTROL PERMIT

Permit No. WV0115924

Issue Date: November 5, 2007
Effective Date: December 5, 2007
Expiration Date: December 4, 2012

Subject: Stormwater Associated With Construction Activities

To Whom It May Concern:

This is to certify that any establishment with discharges composed entirely of stormwater associated with construction activities disturbing one acre or greater of land area (construction activities are land disturbing operations such as grubbing, grading, filling and excavation operations during site development for residential, commercial or industrial purposes) and agreeing to be regulated under the terms of this general permit, except for;

1. Operations that result in the disturbance of less than one acre of total land area, which are not part of a larger common plan of development or sale.

2. Stormwater discharges associated with land disturbing activities that may reasonably be expected to be causing or contributing to a violation of a water quality standard as determined by the Director.

3. Land disturbing activities already governed by other Department of Environmental Protection NPDES permits. This includes Division of Mining and Reclamation permits for coal mining and non-metallic quarries.

4. Landfills, except in the preparation of a new landfill and/or clay borrow areas.

5. Other activities exempt from NPDES permitting requirements as set forth in 40CFR 122.3(e) and 47CSR 10-3.2.b.4 (NPDES Program).

6. Land disturbing activities related to oil and gas activities as required by the Energy Policy Act of 2005. These activities include but are not limited to construction of drilling sites, waste management pits, and access roads, as

> well as construction of the transportation and treatment infrastructure such as pipelines, natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations. Construction activities that result in a discharge of a reportable quantity release or that contribute pollutants (other than non-contaminated sediments) to a violation of a water quality standard are still subject to permit coverage.

is hereby granted coverage under this General WV/NPDES Water Pollution Control Permit to allow stormwater discharges into the surface waters of the State. This General Permit is subject to the following terms and conditions:

> The information submitted on and with the site registration application form will hereby be made terms and conditions of the General Permit with like effect as if all such information were set forth herein, and other pertinent conditions set forth in Sections A, B, C, D, E, F, G, H, I and J.

Construction of single family residences by the homeowner or homeowner's contractor requiring land disturbances less than three acres in size are provided coverage under the General WV/NPDES Water Pollution Control Permit and do not require application for registration. However, all other terms and conditions of the General WV/NPDES Water Pollution Control Permit still apply except for the Notice of Termination requirement.

Sites approved from January 1, 2006, thru November 4, 2007, are hereby granted coverage under General WV/NPDES Water Pollution Control Permit WV0115924. Sites approved prior to January 1, 2006, will have until June 30, 2008, to have final stabilization completed. Final stabilization means disturbed areas shall be covered by the appropriate permanent protection. Final stabilization includes; pavement, buildings, stable waterways (riprap, concrete, grass or pipe), a healthy, vigorous stand of perennial grass that uniformly covers at least 70 percent of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other approved structure or material. If these sites are not stabilized by June 30, 2008, an application to receive permit coverage will be required to be submitted to the Division of Water and Waste Management on or before, July 1, 2008.

SECTION A. TERMS OF PERMIT

Discharges from sites covered under the General Permit shall not cause or contribute to a violation of 47CSR2 (Requirements Governing Water Quality Standards) and 46CSR12, (Requirements Governing Groundwater Standards) of the West Virginia Legislative Rules pursuant to Chapter 22, Article 11 and Article 12. Discharges that are not in compliance with these standards are not authorized.

SECTION B. SCHEDULE OF COMPLIANCE

Compliance with this General Permit and the approved Stormwater Pollution Prevention Plan is required upon the beginning of the construction project.

SECTION C. MANAGEMENT CONDITIONS

C.1. Duty to Comply

C.1.a. The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the federal Clean Water Act (CWA) and State Act (Chapter 22, Article 11 and Article 12) and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or denial of a permit renewal application.

C.1.b. The permittee shall comply with all effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

C.2. Duty to Reapply

If the permittee seeks to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit or general permit registration as detailed in permit reissuance.

C.3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.

C.4. Permit Actions

This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for permit modification, revocation and reissuance, or revocation, or a notification of a planned change or anticipated noncompliance, does not stay any permit condition.

C.5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

C.6. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified as required in 47CSR10-4.6. (NPDES Program). If an authorization becomes inaccurate because a different individual or position has responsibility for the overall operation of the project, a new authorization must be submitted to the Director prior

to, or together with any reports, information, or applications to be signed by an authorized representative.

C.7. Transferability

This permit is not transferable to any person, except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.

C.8. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable specified time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. This information may include water quality information as specified by the Director. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

C.9. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall immediately submit such facts or information.

C.10. Inspections and Entry

The permittee shall allow the Director or an authorized representative upon the presentation of credentials and such other documents as may be required by law

C.10.a. To enter upon the permittee's premises in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;

C.10.b. To have access to and copy at reasonable times any records that must be kept under the conditions of this permit;

C.10.c. To inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit;

C.10.d. To sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.

C.11. Permit Modification

This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia. Any permittee wishing to modify his coverage under this permit shall submit such request at least 45 days prior to the commencement of the proposed action for modification if no public notice period is required. A modification that will have a public notice period must be submitted at least 90 days prior to construction to allow for the public notice procedure.

C.12. Water Quality

The effluent or effluents covered by this permit are to be of such quality so as to not cause violations of applicable water quality standards.

C.13. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA.

C.14. Liabilities

C.14.a. Any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318 or 405 of the CWA is subject to a civil penalty not to exceed $25,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing Section 301, 302, 306, 307, or 308 of the CWA is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or both.

C.14.b. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more that $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

C.14.c. Nothing in C.14.a. and C.14.b. shall be construed to limit or prohibit any other authority the Director may have under the State Water Pollution Control Act, Chapter 22, Article 11 and State Groundwater Protection Act, Chapter 22, Article 12.

C.15 Outlet Markers

An outlet marker shall be posted during the term of General Permit coverage in accordance with Title 47, Series 11, Section 9 (Special Rules) of the West Virginia Legislative Rules.

SECTION D. OPERATION AND MAINTENANCE

D.1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.

D.2. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D.3. Bypass

D.3.a. Definitions

D.3.a.1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and

D.3.a.2. "Severe property damage" means substantial physical damage to property, damage to the treatment facility which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

D.3.b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of D.3.c. and D.3.d. of this permit.

D.3.c. Notification of bypass

D.3.c.1. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

D.3.c.2. If the permittee does not know in advance of the need for bypass, notice shall be submitted as requires in F.2.a. of this permit.

D.3.d. Prohibition of bypass

D.3.d.1. Bypass is permitted only under the following conditions, and the Director may take enforcement action against a permittee for bypass, unless;

D.3.d.1.A. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

D.3.d.1.B. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated sediment, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance. This condition is not satisfied if the sediment and erosion control structures were not installed in the proper sequence; and

D.3.d.1.C. The permittee submitted notices as required under D.3.c. of this permit.

D.3.d.2. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in D.3.d.1. of this permit.

D.4. Upset

D.4.a. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with the terms and conditions of the permit and the Stormwater Pollution Prevention Plan because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

D.4.b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of D.4.c. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

D.4.c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

D.4.c.1. An upset occurred and that the permittee can identify the cause(s) of the upset.

D.4.c.2. The permitted project was at the time being properly operated.

D.4.c.3. The permittee submitted notice of the upset as required in F.2.a. of this permit.

D.4.c.4. The permittee complied with any remedial measures required under C.3. of this permit.

D.4.d. Burden of proof. In any enforcement proceedings the permittee seeking to establish the occurrence of an upset has the burden of proof.

D.5. Removed Substances

Where removed substances are not otherwise covered by the terms and conditions of this permit or other existing permits by the Director, any solids, sludge, filter backwash or other pollutants (removed in the course of treatment or control of wastewater) and which are intended for disposal within the State, shall be disposed of only in a manner and at a site subject to the approval by the Director. If such substances are intended for disposal outside the State or for reuse, i.e., as a material used for making another product, which in turn has another use, the permittee shall notify the Director in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, and the intended place of disposal or use, as appropriate.

SECTION E. MONITORING AND REPORTING

Monitoring of discharges is not required for construction activities unless directed by the Director.

E.1. Definitions

"As-built drawing" means a certified drawing of conditions as they were actually constructed.

"Best management practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, other management practices and various structural practices such as but not limited to silt fence, sediment traps, seeding and mulching, and rip-rap used to prevent or reduce erosion and sediment runoff and the pollution of surface waters of the State. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Buffer zone" means the region near the border of a protected area; a transition zone between areas managed for different objectives.

"Clearing" means cutting and removing vegetation with chain saws, brush axes, brush hogs and other mechanical means where there is little or no soil disturbance.

"Clean Water Act" (CWA) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 97-117 and Public Law 95-576; 33 U.S.C. 1251 et seq.

"Common plan of development" is a contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan. The "plan" is broadly defined as any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot; included in this definition are most subdivisions.

"Control" is a best management practice such as erosion control or sediment control that will reduce sedimentation on a construction project.

"Construction Activity" means land disturbance operations such as grubbing, grading, filling, and excavating during site development for residential, commercial or industrial purposes. This includes, but is not limited to, access roads, borrow and spoil areas.

"Director" means the Director of the Division of Water and Waste Management, Department of Environmental Protection, or her designated representative.

"Disturbed area" is the total area of land disturbing activity that will take place during all phases of a construction project, including, but not limited to, all waste and borrow sites, utility installation, road building, mass grading, and site development.

"Diversion" means a berm or excavated channel or combination berm and channel constructed across sloping land on a predetermined grade. This includes but is not limited to protecting work areas from upslope runoff and reducing the size of the drainage going to sediment trapping structures (clean water diversion), transporting runoff across a project to minimize erosion and diverting sediment-laden water to an appropriate sediment-trapping structure.

"Erosion" means the displacement of solids (soil, mud, rock, and other particles) by the agents of wind, water, and ice in response to gravity.

"Establishment" means an industrial establishment, mill, factory, tannery, paper and pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced.

"Estimate" means to be based on a technical evaluation of the sources contributing to the discharge.

"Excavating" means large scale grading accomplished usually with heavy machinery.

"Final stabilization" means disturbed areas shall be covered permanent protection. Final stabilization includes pavement, buildings, stable waterways (riprap, concrete, grass or pipe), a healthy, vigorous stand of perennial grass that uniformly covers at least 70 percent of the ground, stable outlet channels with velocity dissipation that directs site runoff to a natural watercourse, and any other approved structure or material.

"Grading" means changing surface contours by removing soil and stone from one place and building it up in another.

"Groundwater" means the water occurring in the zone of saturation beneath the seasonal high water table or any perched water zones.

"Groundwater Protection Plan" (GPP) means groundwater protection practices developed and implemented in accordance with WV Legislative Rules, 47CSR58 (Groundwater Protection Rule).

"Grubbing" means physically removing vegetative stumps and roots from the ground and disturbing the earth, usually by heavy machinery.

"Intermittent stream" means a stream that has no flow during sustained periods of no precipitation and does not support aquatic life whose life history requires residence in flowing waters for a continuous period of at least six months.

"Karst" means a type of topography formed over limestone, dolomite, or gypsum resulting in dissolving or solution of the underlying calcareous rock.

"Minor construction activity" means an activity which disturbs one acre or more, but less than three acres.

"National Pollutant Discharge Elimination System" (NPDES) means the national program for issuing, denying, modifying, revoking and reissuing, suspending, revoking, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Section 307, 318, 402, and 405 of CWA, including any approved state program.

"Notice of Intent" (NOI) is the form to be submitted by the applicant to register a small construction project (one that disturbs one to less than three acres) under the Construction Stormwater General Permit. A project that disturbs one to less than three acres but will have construction activities one year or longer must file a Site Registration Application Form.

"Notice of Termination" (NOT) is the form to be submitted by the permittee to terminate coverage under the Construction General Stormwater Permit, after final stabilization has been completed. See Final Stabilization.

"Permanent detention/retention facility" means: Detention- The process of reducing offsite stormwater discharge rates by temporarily holding the water in a storage basin and then releasing it slowly over a period of time. The objective of a detention facility is to regulate the runoff from a given rainfall event and to control discharge rates to reduce the impact on downstream stormwater systems. Retention- The prevention of stormwater runoff from being discharged into receiving waters by storing it in a storage area. Water is retained and stored until it is lost through percolation, removed by evapotranspiration by plants, or through evaporation from the free water surface. Retention systems are designed to not have any offsite discharges.

"Point source" is any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, and container from which pollutants are or may be discharged to surface waters of the state.

"Pollutant" means industrial waste, sewage or other wastes.

"Post-development" means the anticipated final conditions of the project, including rooftops, parking lots, streets, drainage systems, vegetation, and any other structure planned. For subdivisions and speculative developments, it will be assumed that all lots are developed.

"Pre-development" means the condition of the land, the amount and health of the ground cover and vegetation prior to development.

"Runoff coefficient" means the fraction of total rainfall that is not infiltrated into the ground that will appear at the point of discharge as runoff.

"Runoff curve number" is the numeric value reflecting the runoff coefficient and is based on soils, slopes, and type and health of the ground cover.

"Secretary" means the Secretary of the Department of Environmental Protection, or her designated representative.

"Sediment" means any particulate matter that can be transported by fluid flow and which eventually is deposited as a layer of solid particles on the bed or bottom of a body of water or other liquid.

"Sedimentation" means the deposition by settling of a suspended material.

"Sediment trap" means a temporary ponding area formed by constructing an embankment or excavation and embankment that will trap the flow of sediment-laden runoff. Sediment traps have a properly stabilized outlet/weir or riser and pipe to detain sediment-laden runoff from small disturbed areas of five acres or less. Outlets must be designed to extend the detention time and allow the majority of the sediment to settle out.

"Sediment basin" means a temporary structure consisting of an earthen embankment, or embankment and excavated area, located in a suitable area to capture sediment-laden runoff from a construction site. A sediment basin reduces the energy of the water through extended detention (48 to 72 hours) to settle out the majority of the suspended solids and sediment and prevent sedimentation in waterways, culverts, streams and rivers. Sediment basins have both wet and dry storage space to enhance the trapping efficiency and are appropriate in drainage areas of five acres and greater.

"Sinkhole" means a depression in the land surface formed by solution or collapse that directs surface runoff into subsurface or to an underground drainage flow.

"Site Registration Application forms" means the forms designed by the Director for the purpose of registering for coverage under a general permit. Under the General Permit there will be two separate forms, one for one to less than three acres (Notice of Intent) and the Site Registration Application form for projects that disturb three acres and greater. A project that disturbs one to less than three acres but will have construction activities one year or longer must file a Site Registration Application form.

"Stormwater" means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

"Stormwater management facilities" means structures such as ponds, basins, outlets, ditches, velocity dissipaters, infiltration trenches and basins, extended detention basins and ponds, and any other structure used to control the quality and quantity of stormwater from a development project.

"Stormwater Pollution Prevention Plan" (SWPPP) means the erosion and sediment control plan and the post development plan submitted as part of the Site Registration Application form.

"Tier 2.5 Waters" means Waters of Special Concern as identified in 60CSR5 (Antidegradation Implementation Procedures) and 47CSR2-4.1.c. (Requirements Governing Water Quality Standards).

"Tier 3 Waters" means waters as otherwise identified in 47CSR2-4.1.d. (Requirements Governing Water Quality Standards).

"Trout Streams" means any waters which meet the definition of 47CSR2-2.18. (Requirements Governing Water Quality Standards).

"1-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in one year.

"25-year, 24-hour precipitation" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years.

SECTION F. OTHER REPORTING

F.1. Reporting Spill and Accidental Discharges

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to 47CSR11-2. (Special Rules) of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11.

F.2. Immediate Reporting

F.2.a. The permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Department's designated spill alert telephone number ((800) 642-3074). A written submission shall be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and time, and if, the noncompliance has not been corrected, the anticipated time it is

expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

SECTION G. OTHER REQUIREMENTS

G.1. Requiring an Individual Permit or an Alternative General Permit.

G.1.a. The Director may require any person authorized by this permit to apply for and obtain either an individual NPDES permit or an alternative NPDES General Permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any owner or operator authorized by this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that such a permit application is required.

G.2. Prohibition of Non-Stormwater Discharges

All discharges authorized by this permit shall be composed entirely of stormwater. Discharges of material other than stormwater are not authorized by this permit except as follows.

The following non-stormwater discharges are authorized by this permit: discharges from firefighting activities, fire hydrant flushing; waters used to wash vehicles or control dust; potable water sources, including waterline flushing; irrigation drainage; lawn watering; routine external building washdown which does not use detergents; pavement washwater where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated groundwater; and foundation or footing drains where flows are not contaminated with process materials such as solvents that are combined with stormwater discharges associated with industrial activity.

This permit does not authorize the conveyance, diversion, channeling, directing or otherwise allowing the discharge of stormwater into a sinkhole without an Underground Injection Control Permit.

G.3. Releases in Excess of Reportable Quantities

This permit does not relieve the permittee of the reporting requirements of 40CFR117 and 40CFR302. The discharge of hazardous substances in the stormwater discharge(s) from a project is not authorized by this General Permit, and in no case shall the discharge(s) contain a hazardous substance equal to or in excess of reporting quantities.

G.4. Stormwater Pollution Prevention Plans and Groundwater Protection Plans (SWPPP/GPP)

A Stormwater Pollution Plan and a Groundwater Protection Plan shall be developed for each project covered by this permit. These two plans may be combined into one plan if all of the requirements for both plans are met. Alternatively, they may be developed and maintained as separate stand-alone documents.

Stormwater Pollution Prevention Plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges associated with construction activity. In addition, the plan shall describe and ensure the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction activity and to assure compliance with the terms and conditions of this permit.

Groundwater Protection Plans (GPP) shall be prepared in accordance with the requirements of 47CSR58-4.11. et seq (Groundwater Protection Regulations). The GPP shall identify all operations that may reasonably be expected to contaminate the groundwater resources with an indication of the potential for soil and groundwater contamination from those operations. In addition the GPP shall provide a thorough and detailed description of procedures designed to protect groundwater from the identified potential contamination sources. The GPP is not required to be submitted to the Division of Water and Waste Management for review. Guidance in the completion of a GPP is available from the Division of Water and Waste Management.

G.4.a. The SWPPP and the GPP shall be signed in accordance with Section C.6. and retained onsite.

G.4.b. The application and SWPPP shall be submitted to the Division of Water and Waste Management at least 45 days before construction is to begin, except as noted in G.4.b.3. and G.4.b.4. Prospective permittees should submit applications for review prior to accepting construction bids on the project. As the plans are evaluated by the Director or authorized representative, the Director or authorized representative may notify the permittee during the 45-day review period that the plan does not meet one or more of the minimum requirements of this section. After such notification from the Director or authorized representative, the permittee shall make changes to the plan in accordance with the time frames established below, and shall submit to the Director a written certification that the requested changes have been made.

G.4.b.1. Except as provided in G.4.b.2., the permittee shall have 30 days after such notification to make the changes necessary.

G.4.b.2. The permittee shall have 24 hours after such notification to make changes relating to sediment and erosion controls to prevent loss of sediment from an active construction site, unless additional time is provided by the Director or an authorized representative.

G.4.b.3. Projects disturbing less than three acres and that do not discharge to or upstream of Tier 2.5 or Tier 3 waters shall submit only the Notice of Intent Form (NOI) 10 days prior to initiating construction. A project that disturbs one to less than three acres but will have construction activities one year or longer must file a Site Registration Application form.

G.4.b.4. Projects that will discharge to or upstream of Tier 2.5 or Tier 3 waters and disturb three acres or more, or that will disturb 100 or more acres, or that the grading phase of construction will last for more than one year, shall submit the application and SWPPP at least 90 days prior to construction to allow for the public notice procedure.

G.4.b.5. Within 24 hours of filing an NOI (one to less than three acres) or a Site Registration Application (three acres or more) with DWWM, all projects shall display a sign for the duration of the construction project near the entrance of the project or, for linear projects, at a location near an active part of the project that is accessible by the public, which contains the following information using the template found in the instructions: 1) the registrant's name or the name of a contact person along with a telephone number; 2) A brief description of the project; 3) a statement indicating that the NOI or SWPPP, as applicable, has been filed with the DWWM; 4) the address and telephone number of the agency where the NOI or SWPPP is maintained; and 5) That any person may obtain a copy of the NOI or SWPPP by contacting the DWWM at (800) 654-5227. The sign shall be a minimum of two feet by two feet and at least three feet above ground level, clearly visible and legible from a public roadway or right-of-way. If it is not feasible to display a sign at or near the project, the registrant, with prior approval from the DWWM, may post a notice containing the foregoing information at a local public building, including, but not limited to, a town hall or public library.

G.4.c. The permittee shall modify, using forms provided by DWWM, the SWPPP whenever there is a change in design, construction, scope of operation, or maintenance, which has the potential to adversely impact the surface waters of the State, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activities. Should conditions warrant, the Director, or the Director's representative, may request changes to the SWPPP during a field inspection. The Director may review changes or modifications to the SWPPP in the same manner as above.

The permittee shall amend the GPP whenever there is a change in design, construction, operation, or maintenance which could reasonably be expected to have an impact on the potential contamination of groundwater.

G.4.d. In addition to the requirements of G.4.e, the SWPPP shall also include, at a minimum, the following items:

G.4.d.1. General management controls

G.4.d.1.A. Preventive maintenance – A preventive maintenance program shall involve inspection and maintenance of sediment and erosion control best management practices to identify and address conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

G.4.d.1.B. Good housekeeping – Good housekeeping requires the maintenance of a clean and orderly project.

G.4.d.1.C. Spill prevention and response procedures – Areas where potential spills may occur, and their accompanying drainage points, shall be identified clearly in the SWPPP/GPP. Where appropriate, specify material handling procedures and storage requirements in the SWPPP/GPP. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a cleanup shall be available to personnel, including spill kits.

G.4.d.2. Consistency with other plans

Stormwater Pollution Prevention Plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the CWA or any Best Management Practices (BMP) and Groundwater Protection Plans (GPP) pursuant to 47CSR58 (Groundwater Protection Rule) or otherwise required by an NPDES permit and may incorporate any part of such plans into the Stormwater Pollution Prevention Plan by reference.

G.4.e. Requirements for construction activities – Operations that discharge stormwater associated with construction activity disturbing one or more acres are not only subject to the requirements of Section G.4.d. of this permit, but are also subject to the following requirements. The SWPPP shall include, as a minimum, the following items.

G.4.e.1. Site description – Each plan shall, at a minimum, provide a description of the following:

G.4.e.1.A. A description of the nature of the construction activity, including a proposed timetable for major activities;

G.4.e.1.B. Estimates of the total area of the site and the part of the site that is expected to undergo excavation or grading and the total amount of excavation by cut and fill;

G.4.e.1.C. For each discharge design point, the pre-construction peak discharge from a one year, 24-hour storm in cubic feet per second and an the post-development peak discharge from a one year, 24-hour storm in cubic feet per second shall be calculated. The design procedures shall follow professionally accepted engineering and hydrologic methodologies.

G.4.e.1.D. Site maps indicating, with a minimum of five-foot contours, drainage patterns and slopes prior to construction and anticipated conditions after grading activities, topsoil stockpiles, waste areas, borrow sites, locations of sediment control structures identified

in the narrative, the location of impervious areas after construction is complete, final stormwater routing including all ditches and pipe systems, property boundaries and easements, nearest receiving stream, access roads, legend and springs, surface waters and any other information necessary to describe the project in detail.

G.4.e.1.E. A description and detail of the proposed construction entrance(s). Each site shall have stone access entrance and exit drives and parking areas to reduce the tracking of sediment onto public or private roads. Except for haul roads, all unpaved roads on the site carrying more than 25 vehicles per day shall be graveled.

G.4.e.2. Controls – Each construction operation covered by this permit shall develop a description of controls appropriate for the project and implement such controls. The description of these controls shall address the following minimum components, including a schedule for implementing such controls.

G.4.e.2.A. Erosion and sediment controls

G.4.e.2.A.i. Vegetative practices – A description of interim and permanent stabilization practices, including site specific implementation schedules of the practices shall be provided. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized as rapidly as possible. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Also include in the plan seedbed preparation requirements and the type and amount of soil amendments necessary to establish a healthy stand of vegetation. A record of the dates when major grading activities will occur, and when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures will be initiated shall be included in the plan. Except as noted below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has permanently ceased.

G.4.e.2.A.i.a. Where the initiation of stabilization measures by the seventh day after construction activity temporarily or permanently ceases is precluded by snow cover, stabilization measures shall be initiated as soon as conditions allow.

G.4.e.2.A.i.b. Where construction activity will resume on a portion of the site within 21 days from when activities ceased, (e.g., the total time period that construction activity is temporarily halted is less that 21 days) then stabilization measures do not have to be initiated on that portion of the site by the seventh day after construction activities have temporarily ceased.

G.4.e.2.A.i.c. Areas where the seed has failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within 30 days after seeding and

mulching must be reseeded immediately, or as soon as weather conditions allow.

G.4.e.2.A.i.d. Diversions must be stabilized prior to becoming functional.

G.4.e.2.A.ii. Structural practices – A description of the structural practices to be used to divert flows around exposed soils, store flows or otherwise limit runoff from exposed areas and eliminate sediment-laden runoff from the site. Such practices may include but are not limited to silt fences, earth dikes and berms, land grading, diversions, drainage swales, check dams subsurface drains, pipe slope drains, storm drain inlet protection, rock outlet protection, reinforced soil retention systems and geotextiles, gabions and riprap, and permanent and temporary sediment traps/basins.

G.4.e.2.A.ii.a. For locations on a site that have a drainage area of five acres or less, a sediment trap which provides a storage volume equal to 3,600 cubic feet per acre of drainage area shall be installed. Half of the volume of the trap will be in a permanent pool and half will be dry storage.

G.4.e.2.A.ii.b. For drainage areas of greater than five acres, a sediment basin providing 3,600 cubic feet per drainage acre shall be installed. Half of the volume of the basin shall be in a permanent pool and half shall be dry storage. Sediment basins must be able to dewater the dry storage volume in 48 to 72 hours. A sediment basin must be able to pass through the spillway(s) a 25-year, 24-hour storm event, and still maintain at least one foot of freeboard.

G.4.e.2.A.ii.c. The inlet(s) and outlet(s) for a sediment trapping structure must be protected against erosion by appropriate material such as riprap or other similar media.

G.4.e.2.A.ii.d. If necessary, diversions will be used to direct runoff to the trapping structure. Diversions must be stabilized prior to becoming functional.

G.4.e.2.A.ii.e. For locations served by a common drainage where a detention basin providing 3,600 cubic feet of storage is not attainable, additional sediment and erosion controls within the project area are required in lieu of the required sized sediment basin. Justification and a narrative description of the additional measures proposed must be provided for use of any practice(s) other than sediment basins or traps.

G.4.e.2.A.ii.f. Fill slopes must be protected by measures used to divert runoff away from fill slopes to conveyance measures such as pipe slope drains or stable channels.

G.4.e.2.A.ii.g. Sediment trapping structures will be eliminated and the area properly reclaimed and stabilized when the contributing drainage area is stabilized and the structures are no longer needed, unless the structure is converted into a permanent stormwater detention/retention structure.

G.4.e.2.A.ii.h. All trapped sediments will be disposed on an upland area where there is no chance of entering nearby streams.

G.4.e.2.A.ii.i. Breaching the embankment to dewater the structure is not permitted. Dewatering and structure removal shall not cause a violation of water quality standards. Provide a description of the procedures that will be used in removing these structures and the time frame.

G.4.e.2.A.ii.j. No sediment-laden water will be allowed to leave the site without going through an appropriate best management practice.

G.4.e.2.A.ii.k. Hay or straw bales are not acceptable BMPs.

G.4.e.2.A.iii. Presumptive conditions for discharges to Tier 2.5 and Tier 3 waters

Construction activities discharging to Tier 2.5 or Tier 3 waters will go through the Tier 2.5 or Tier 3.0 antidegradation review process.

G.4.e.2.B. Stormwater management plan

A description of measures that will be installed during construction to control pollutants in stormwater discharges after the project is completed shall be included in the SWPPP. The completed project shall convey stormwater runoff in a manner that will protect both the site and the receiving stream from post-construction erosion. All surface waters and other runoff conveyance structures shall be permanently stabilized as appropriate for expected flows. In developing structural practices for stormwater control, the permittee shall consider the use of, but not limited to: infiltration of runoff onsite; flow attenuation by use of open vegetated swales and natural depressions; stormwater retention structures and stormwater detention structures. A combination of practices may be utilized. The permittee should consider low impact development (LID) in the design of the site and the best management practices. This will allow the site to retain its natural hydrology and infiltrate stormwater within the boundary of the site. The use of impervious surfaces for stabilization should be avoided. Velocity dissipation devices shall be placed at the outlet of all detention or retention structures and along the length of any outlet channel as necessary to provide a non-erosive velocity flow from the structure to a water course.

Projects located in areas that have local government requirements and/or criteria for post development stormwater management must meet those requirements and/or criteria. Compliance with this general permit does not assure compliance with local codes regulations, or ordinances.

The permittee shall submit all calculations, watershed mapping, design drawings, and any other information necessary to explain the technical basis for the stormwater management plan. Since development site conditions vary widely, plan preparers will have significant latitude in designing practices to comply with this provision of the

permit. However, design procedures shall follow professionally accepted engineering and hydrologic methodologies. Permanent stormwater management structures that will impound water (detention/retention basins or similar structures) shall be designed and certified by a registered professional engineer. These structures shall also have a certified as-built drawing submitted with the Notice of Termination at the completion of the project.

G.4.e.2.C Other controls

G.4.e.2.C.i.Waste disposal –All solid waste and construction/demolition material must be disposed of in accordance with the Code of West Virginia and Legislative Rule Title 33 Series 1, (Solid Waste Management Rule).

G.4.e.2.C.ii. Provisions must be made to control fugitive dust.

G.4.e.2.C.iii. Groundwater Protection Plan (GPP) – The applicant shall prepare a GPP that will satisfy the 47CSR58-4.11. et seq. Groundwater must be protected in accordance with the Code of West Virginia and Legislative Rule Title 47 Series 58 (Groundwater Protection Rule).

G.4.e.2.C.iv. Employee training – Employee training programs shall inform personnel at all levels of responsibility of the components and goals of the SWPPP. Training should address topics such as spill response, good housekeeping and routine inspection. Training shall be on a quarterly basis and records of the training shall be maintained on site for review by the Director or the Director's representative.

G.4.e.2.C.v. Visual inspection – Company personnel shall be identified to inspect as set forth under G.4.e.2.D. A tracking procedure shall be used to ensure that adequate corrective actions have been taken in response to deficiencies identified during an inspection. Records of inspections shall be maintained onsite for review by the Director or the Director's representative.

G.4.e.2.C.vi. Recordkeeping and internal reporting procedures – Incidents such as spills, leaks and improper dumping, along with other information describing the quality and quantity of stormwater discharges should be included in the records. Inspection and maintenance records must be kept onsite for review by the Director or the Director's representative.

G.4.e.2.D Maintenance

A description of procedures to maintain in good and effective condition and promptly repair or restore all grade surfaces, walls, dams and structures, vegetation, erosion and sediment control measures and other protective devices identified in the site plan. At a minimum, procedures in a plan shall provide that all erosion controls on the site are inspected at least once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain per 24-hour period.

G.4.e.2.D.i. All public and private roads adjacent to a construction entrance must be inspected and cleaned of debris originating from the construction site as necessary.

G.4.f. All Stormwater Pollution Prevention Plans and Groundwater Protection Plans required under this permit are considered reports that shall be available to the public under Section 308(b) of the CWA. The owner or operator of a project with stormwater discharges covered by this permit shall make plans available to members of the public upon request. However, the permittee may claim any portion of a Stormwater Pollution Plan or Groundwater Protection Plan as confidential in accordance with 47 CSR10-12.7. (NPDES Program).

G.4.g. Compliance with other laws and statutes

Nothing in this general permit shall be construed as excusing the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

G.5. Discharges to Impaired Waters

This permit does not authorize new sources or new discharges of constituents of concern to impaired waters unless consistent with the approved total maximum daily load (TMDL) and applicable state law. Impaired waters are those that do not meet applicable water quality standards and are listed on the Clean Water Act Section 303(d) list. Pollutants of concern are those constituents for which the water body is listed as impaired. Discharges of pollutants of concern to impaired waterbodies for which there is an approved TMDL are not eligible for coverage under this permit unless they are consistent with the approved TMDL. Within six months of the TMDL approval, permittees must incorporate any limitations, conditions or requirements applicable to their discharges necessary for compliance with the TMDL, including any monitoring or reporting required by DWWM rules, into their SWPPP in order to be eligible for coverage under this general permit.

Sites that discharge into a receiving water that has been listed on the Clean Water Act 303(d) list of impaired waters, and with discharges that contain the pollutant(s) for which the water body is impaired, must document in the SWPPP how the BMPs will control the discharge of the pollutant(s) of concern.

G.6. Endangered and Threatened Species

If a site discharges to a stream where a federally endangered or threatened species or its habitats are present, the applicant shall contact the U.S. Fish and Wildlife Service to insure that requirements of the federal Endangered Species Act are met.

H. Reopener Clause

If there is evidence indicating potential or realized impacts on water quality due to any stormwater discharge authorized by this general permit, the owner or operator of such discharge may be required to obtain an individual permit or alternative general permit in accordance with Section G.1. of this permit, or the permit may be modified to include different limitations and/or requirements.

I. The conditions, standards, and limitations of this General Permit will be reviewed at the time of reissuance for possible revisions that may lead to more or less stringent conditions, standards, and limitations.

J. Permit coverage for construction activities encompassed by this permit expires upon satisfactory stabilization of the site. Satisfactory stabilization means **ALL** disturbed areas shall be covered by some permanent protection. Stabilize includes pavement, buildings, waterways (riprap, concrete, grass, or pipe), a healthy, vigorous stand of grass that uniformly covers more than 70 percent of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other approved structure or material. The permittee will request a final inspection by sending in the Notice of Termination. The Notice of Termination shall also include as-built drawings, certified by a registered professional engineer, for any permanent ponds or basins. Sites not stabilized will continue to have coverage under this permit and will be assessed an annual permit fee as promulgated by the West Virginia Legislature. Sites will be assessed a prorated annual fee based upon the completion date and proper stabilization. The Notice of Termination must be submitted within 30 days after final stabilization is achieved.

****

The herein-described activity is to be constructed or installed and operated, used and maintained strictly in accordance with the terms and conditions of this permit with any plans, specifications, and information submitted with the individual site registration application form, with any plan of maintenance and method of operation thereof submitted and with any applicable rules and regulations promulgated by the Environmental Quality Board and the Secretary of the Department of Environmental Protection.

Failure to comply with the terms and conditions of this permit, with any plans, specifications and information submitted, and with any plan of maintenance and method of operation thereof submitted shall constitute grounds for the revocation or suspension of this permit to any individual establishment or other person and for the invocation of all the enforcement procedures set forth in Chapter 22, Articles 11 and 12 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Chapter 22, Article 11 of the Code of West Virginia.

BY: Lynn A. McClung
Director

Please See Instructions Before Completing This Form

NPDES FORM	dep	**Notice of Termination (NOT) of Coverage Under a NPDES General Permit for Storm Water Discharges Associated with Construction Activity**

Submission of this Notice of Termination constitutes notice that the party identified in Section II of this form is no longer authorized to discharge storm water associated with construction activity under the NPDES program. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM.

I. Permit Information

NPDES Storm Water General Permit Registration Number: WVR10

Date Storm Water Discharge Terminated: _____

II. Facility Operator Information

Name: _____ Phone: _____

Address: _____

City: _____ State: ____ ZIP Code: _____

III. Facility/Site Location Information

Name: _____

Address: _____

City: _____ ZIP Code: _____

County: _____

Latitude: _____ Longitude: _____

IV. Certification: I certify under penalty of law that all storm water discharges associated with construction activity from the identified facility that are authorized by a NPDES general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this Notice of Termination, I am no longer authorized to discharge storm water associated with construction activity under this general permit, and that discharging pollutants in storm water associated with construction activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

Print Name: _____ Date: _____

Signature: _____

Instructions for Completing Notice Of Termination (NOT) Form

Who May File a Notice of Termination (NOT) Form

Permittees who are presently covered under a National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity may submit a Notice of Termination (NOT) form when their facilities no longer have any storm water discharges associated with construction activity.

For construction activities, elimination of all storm water discharges associated with construction activity occurs when disturbed soils at the construction site have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activity from the construction site that are authorized by a NPDES general permit have otherwise been eliminated. Final stabilization means that all soil-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Send this form to the Charleston address below:

WV DEP - DWWM
Permitting and Engineering Branch
601 57th Street SE
Charleston, WV 25304 -2345

Instructions
Notice of Termination (NOT) of Coverage Under The NPDES General Permit for Storm Water Discharges Associated With Industrial Activity

Section I Permit Information

Enter the existing NPDES Storm Water General Permit registration number assigned to the facility or site identified in Section III.

Enter the date that the construction project was terminated and all disturbed areas were stabilized as required by the General Permit. A final inspection to determine the adequacy of the stabilization will be conducted by this agency.

Section II Facility Operator Information

Give the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this application. The name of the operator may or may not be the same name as the facility. The operator of the facility is the legal entity that controls the facility's operation, rather than the plant or site manager. Do not use a colloquial name. Enter the complete address and telephone number of the operator.

Section III Facility/Site Location Information

Enter the facility's or site's official or legal name and complete address, including city, county and ZIP code.

Section IV Certification

State statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipality, State, Federal, or other public facility: by either a principal executive officer or ranking elected official.

The completed form is to be submitted to the Charleston address for all projects.

White, Ryan

From: Richards, Craig <Craig.Richards@burgessniple.com>
Sent: Monday, December 12, 2011 11:22 AM
To: White, Ryan
Cc: Tim Haapala
Subject: FW: K2M NPDES stormwater permit
Attachments: EP 14151_2007_Construction_Storm_Water_General_Permit[1].pdf; Eric T Morgan P E .vcf; NOT 14400_SW_Cons_Termination_notice.doc

Ryan,

The attached documents, and the e-mail below from the DEP dated November 24, 2010, are all of the documents comprising the NPDES Construction Storm Water General Permit issued by the WVDEP. Please call or e-mail if you need anything else.

CRAIG D. RICHARDS, PE
Burgess & Niple, Inc. | Parkersburg Office
4424 Emerson Avenue | Parkersburg, WV 26104
304-485-8541, Ext. 5130 | Cell: 304-481-3396
Email:craig.richards@burgessniple.com
www.burgessniple.com | *When the results matter now...and years from now.*

BURGESS & NIPLE
Engineers ■ Architects ■ Planners

From: Susan J. Riggs [mailto:SRiggs@spilmanlaw.com]
Sent: Monday, December 12, 2011 11:17 AM
To: Richards, Craig
Subject: K2M NPDES stormwater permit

Craig, this email only has the stormwater NPDES permit. If you need USACE or any others let me know and I will find those emails.

Susan

Susan J. Riggs
304.340.3867 - office
304.542.8678 - mobile
sriggs@spilmanlaw.com

From: Utt, Timm [mailto:timm.utt@burgessniple.com]
Sent: Tuesday, December 06, 2011 1:41 PM
To: Susan J. Riggs
Subject: FW: Approval for WVR105260, Kanawha Two-Mile Creek, Sewer Improvements Project, Contracts 10-6 through 10-9

Susan,

Attached is the email that Tim Haapala received for t he approval of the NPDES permit.

From: Eric Morgan [mailto:emorgan@csbwv.com]
Sent: Tuesday, December 06, 2011 1:11 PM
To: Utt, Timm
Subject: FW: Approval for WVR105260, Kanawha Two-Mile Creek, Sewer Improvements Project, Contracts 10-6 through 10-9

CSB
THE SANITARY BOARD

Eric T. Morgan, P.E.
Engineer

208 26TH STREET
CHARLESTON, WV 25312

PH (304) 348-1084 EXT. 259
CELL (304) 549-0701
FAX (304) 347-1808
emorgan@csbwv.com

From: Tim Haapala
Sent: Monday, December 06, 2010 8:10 AM
To: Eric Raper
Subject: FW: Approval for WVR105260, Kanawha Two-Mile Creek, Sewer Improvements Project, Contracts 10-6 through 10-9

From: DEP NPDESEP [mailto:DEP.NPDESEP@wv.gov]
Sent: Wednesday, November 24, 2010 8:26 AM
To: Tim Haapala; DEP NPDESEP
Cc: lsibicky@burnip.com; Chambers, Jason; Saunders, Kevin W; Hackney, Richard; Musser, Cynthia J; Larue, Tina C
Subject: Approval for WVR105260, Kanawha Two-Mile Creek, Sewer Improvements Project, Contracts 10-6 through 10-9

Tim G. Haapala, Operations Mgr.
Charleston Sanitary Board
208 26th St.
Charleston, WV 25312
304-348-1084

Physical Site Location: WV Rt. 21(Sissonville Dr.); City Streets- Scraggs Dr., Chandler Dr., Sugar Creek Dr., and Lily Dr., Charleston

Please be advised that this e-mail constitutes approval for your construction activity and your registration no. is WVR105260. You are now authorized to operate under WV/NPDES General Water Pollution Control Permit No. WV0115924, issued on November 5, 2007, copy attached.

You should carefully read the contents of this General Permit and become familiar with all requirements needed to remain in compliance with your permit. We've also attached a "Notice of Termination" form to be completed and submitted when all disturbed areas are stabilized. You can find the permit and Notice of Termination form via the Internet by visiting Permitting, Division of Water and Waste Management at www.wvdep.gov . Your annual permit fee has been assessed as $1000.00. You will be invoiced by this

agency upon the anniversary date of this approval date. Failure to submit the annual fee within ninety (90) days of the due date will render your permit void upon the date you are mailed a certified written notice to that effect. Please be advised that a pro-rated annual permit fee may be assessed upon the completion date and proper stabilization.

Scott G. Mandirola, Director
WV DEP-Division of Water & Waste Mgt.
601 57th St SE
Charleston, WV 25304-2345
Phone: (304) 926-0495
Fax: (304) 926-0496

Note:
These electronic documents are provided by Burgess & Niple (B&N) as a convenience to our clients.
The official document is available as a manually signed, initialed, or sealed hard copy. If there is a discrepancy between electronic files and the hard copies, the hard copies shall prevail.
It is our professional opinion that this electronic information provides information current as of the date of its release. Any use of this information is at the sole risk and liability of the user. The user is responsible for updating information to reflect any changes in the information following the preparation date of this transmittal. The delivery of this information in electronic format is for the benefit of the owner for whom the services have been performed. Nothing in the transfer should be construed to provide any right to third parties to rely on the information provided, or that the use of this information implies the review and approval of Burgess & Niple.

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This email has been scanned for all viruses by the MessageLabs Email Security System.

CHARL-2 OP ID: CM

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/22/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Commercial Insurance Services
340 MacCorkle Ave. Ste #200
Charleston, WV 25314
Janet L. Buckley, AAI, CPIW

304-345-8000
304-345-8014

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Lloyd's of London	
INSURER B : Travelers Indemnity Co	25666
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
City Of Charleston
P. O. Box 2749
Charleston, WV 25330

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC			PK1007010	03/31/11	03/31/12	EACH OCCURRENCE	$ 1,000,000*
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$ 4,000,000
							PRODUCTS - COMP/OP AGG	$
								$
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS / SCHEDULED AUTOS X HIRED AUTOS / X NON-OWNED AUTOS			PK1007010	03/31/11	03/31/12	COMBINED SINGLE LIMIT (Ea accident)	$ 4,700,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR EXCESS LIAB / CLAIMS-MADE DED / RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		PK1007010	03/31/11	03/31/12	WC STATU-TORY LIMITS / OTH-ER	
							E.L. EACH ACCIDENT	$ 2,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 2,000,000
							E.L. DISEASE - POLICY LIMIT	$ 2,000,000
A	Property Section			PK1007010	03/31/11	03/31/12	25,000	1,000,000
B	Excess Property			KTQXSP545D443511	03/31/11	03/31/12	SIR	302,417,572

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Certificate holder is named as additional insured as respects Charleston Sewerage System Revenue Bonds, Series 2011A.

CERTIFICATE HOLDER

WDACHA1

WV Water Development Authority
180 Association Drive
Charleston, WV 25311

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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JACKSONKELLY
ATTORNEYS AT LAW PLLC
500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
www.jacksonkelly.com

CLOSING MEMORANDUM

3.15

To: **Bill Collison**
Rosalie Brodersen
Carol Cummings
Sara Boardman
Samme Gee

From: **Ryan White**

Date: **December 13, 2011**

Re: **The City of Charleston Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program)**

1. DISBURSEMENTS TO CITY

Payor:	West Virginia Department of Environmental Protection
Source:	Series 2011 A Bonds Proceeds
Amount:	$48,000
Date:	December 13, 2011
Form:	Wire
Payee:	The City of Charleston
Bank:	JPMorgan Chase Bank, NA
Wire Routing #:	021000021
Account:	SRF Construction Projects
Account Number:	427993550

2. DISBURSEMENTS TO MUNICIPAL BOND COMMISSION

Payor:	The City of Charleston
Source:	Series 2011 A Bonds Proceeds
Amount:	$1,573,017
Date:	December 13, 2011
Form:	Wire
Payee:	West Virginia Municipal Bond Commission
Bank:	BB and T
Account:	Series 2011 A Bonds Reserve Account
Account Number:	5270517317
ABA Number:	051503394

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JACKSONKELLY
ATTORNEYS AT LAW PLLC

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4.1

December 13, 2011

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: The City of Charleston
Sewerage System Revenue Bonds, Series 2011 A
(West Virginia CWSRF Program)

Ladies and Gentlemen:

We have served as bond counsel to The City of Charleston (the "Issuer"), a municipal corporation, in connection with the issuance of its Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement for the Bonds dated December 13, 2011, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are issued in the principal amount of $25,877,009, in the form of one bond, registered as to principal and interest to the Authority, with interest at the rate of 2% per annum, and with

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principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing December 1, 2013, all as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds are subject to the SRF Administrative Fee equal to 1% of the principal amount of the Bonds as set forth in the Schedule Y attached to the Loan Agreement.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); [(ii) funding a reserve account for the Bonds]; and (iii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and a Bond Ordinance duly passed by the Issuer on September 6, 2011, effective September 19, 2011, as supplemented by a Supplemental Resolution duly adopted by the Issuer on December 5, 2011 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and in the Loan Agreement when used herein.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to enact the Ordinance and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof.

3. The Loan Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

4. The Issuer has legally and effectively enacted the Ordinance and adopted all other necessary resolutions in connection with the issuance and sale of the Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer=s First Lien Bonds and senior to the Issuer's Second Lien Bonds, all in accordance with the terms of the Bonds and the Ordinance.

6. Under the Act, the Bonds and any interest thereon are exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof.

7. The Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest, if any, from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

8. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Bonds, the Loan Agreement and

the Ordinance, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach or default under any ordinance, resolution, order, agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.

9. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, all requisite orders, consents, certificates and approvals from the DEP, the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia (the "PSC"), and the Issuer has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges.

10. To the best of our knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Bonds and the Ordinance, the acquisition and construction of the Project, the operation of the System, or the validity of the Bonds or the collection or pledge of the Net Revenues therefor.

No opinion is given herein as to the effect upon enforceability of the Bonds under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or in the exercise of judicial discretion or principles of equity in appropriate cases.

We have examined the executed and authenticated Bond numbered AR-1 and in our opinion, the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

Jackson Kelly PLLC

OFFICE OF THE CITY ATTORNEY

City of Charleston | P.O. Box 2749, Charleston WV 25330 | 304-348-8031
Writer's Fax: 304-348-0770 | Writer's email: paul.ellis@cityofcharleston.org

Paul D. Ellis
City Attorney of Charleston

December 13, 2011

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Jackson Kelly PLLC
P. O. Box 553
Charleston, WV 25322

Re: The City of Charleston
Sewerage System Revenue Bonds, Series 2011 A
(West Virginia CWSRF Program)

Ladies and Gentlemen:

I am City Attorney for The City of Charleston in Kanawha County, West Virginia (the "Issuer"). As such City Attorney, I have examined copies of the approving opinion of Jackson Kelly PLLC, as bond counsel, relating to the above-captioned bonds of the Issuer (the "Bonds"), a loan agreement for the Bonds, dated December 13, 2011, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), a Bond Ordinance duly passed by the Issuer on August 6, 2011, effective August 19, 2011, as supplemented by a Supplemental Resolution duly adopted by the Issuer on December 5, 2011 (collectively, the "Ordinance"), a Petition of the Sanitary Board duly adopted on April 7, 2011, and other documents relating to the Bonds. All capitalized terms used

herein and not otherwise defined herein shall have the same meanings set forth in the Loan Agreement and the Ordinance when used herein.

I am of the opinion that:

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System and to enact the Ordinance, all under the Act and other applicable provisions of law. The Sanitary Board has been duly created by the Issuer and is presently existing as a sanitary board under the Act.

2. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the DEP and the Authority, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.

3. The Mayor, City Clerk and members of the Council and the Sanitary Board of the Issuer have been duly, lawfully and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

4. The Ordinance has been duly adopted and enacted by the Issuer and is in full force and effect.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Sincerely,

Paul D. Ellis
City Attorney of Charleston

SPILMAN THOMAS & BATTLE, PLLC
ATTORNEYS AT LAW

December 13, 2011

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

West Virginia Department of Environmental Protection
601 57th Street
Charleston, West Virginia 25304

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Jackson Kelly PLLC
P.O. Box 553
Charleston, WV 25322

Re: The City of Charleston
Sewerage System Revenue Bonds, Series 2011 A
(West Virginia CWSRF Program)

Ladies and Gentlemen:

We are special counsel to the City of Charleston, West Virginia (the "Issuer") and its Sanitary Board in connection with certain matters before the Public Service Commission of West Virginia (the "PSC") and for the imposition of rates and charges. As such special counsel, we are of the opinion that:

The Issuer has received the Recommended Decision of the Administrative Law Judge entered on February 17, 2011, Final as of March 9, 2011, in Case No. 10-1732-S-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the PSC order has expired without any appeal. The order remains in full force and effect.

The Issuer duly enacted a sewer rate ordinance on February 19, 2008, setting forth the rates and charges for the services of the System. The Issuer has complied with all requirements of State law and the PSC to make the rates valid and effective. The time for appeal of such rate ordinance expired and there was no appeal thereof. The rates are in full force and effect.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Sincerely,

Spilman Thomas & Battle, PLLC

SPILMAN THOMAS & BATTLE, PLLC

cc: Larry Roller
3257600

SPILMAN THOMAS & BATTLE, PLLC
ATTORNEYS AT LAW

December 13, 2011

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

West Virginia Department of Environmental Protection
Division of Water & Waste Management
State Revolving Fund Program
601 57th Street
Charleston, WV 25304

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Jackson Kelly PLLC
P.O. Box 553
Charleston, WV 25322

Re: The City of Charleston
Kanawha Two Mile Sewer System Project
Sewerage System Revenue Bonds, Series 2011 A
(West Virginia CWSRF Program)

Ladies and Gentlemen:

This Firm represents the City of Charleston and its Sanitary Board ("Sanitary Board") in connection with a proposed project to construct the Kanawha Two Mile sewer system improvements project (the "Project"), and provides this final title opinion on behalf of the City of Charleston and the Sanitary Board to satisfy the requirements of the West Virginia Department of Environmental Protection (the "DEP") and the West Virginia Clean Water Revolving Loan Fund Program (the "Program") with regard to the financing proposed for the Project. Please be advised of the following:

1. That we are of the opinion that the City of Charleston is a duly created and existing municipal/public corporation possessed with all the powers and authority granted to municipal/public corporations under the laws of the State of West Virginia and through its Sanitary Board has the full power and authority to construct, operate and maintain the Project as approved by the Department of Environmental Protection.

2. That the City of Charleston or the Sanitary Board has obtained all necessary permits and approvals for the construction of the Project. In rendering this opinion, we have relied solely on representations concerning construction permits and approvals made to us by Burgess & Niple, the consulting engineer for the Project ("Burgess & Niple").

3. That we have investigated and ascertained the location of and are familiar with the legal description of the easements and/or rights of way required for the Project as set forth in the plans for the Project prepared by Burgess & Niple. In rendering this opinion, we have relied solely on the plans for the Project, as amended from time to time, prepared by Burgess & Niple (the "Plans"), and on lists of the necessary easements and/or rights of way prepared by Burgess & Niple.

4. That we have examined the records on file in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, the county in which the Project is to be located, and, in our opinion, the City of Charleston or the Sanitary Board has acquired legal title or such other estate or interest in the easements and/or rights-of-way necessary for the Project, which Burgess & Niple advised were necessary to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the facilities to be constructed, excepted and subject to the following.

The following listed properties are being acquired by eminent domain and the necessary filings have been made in the Office of the Clerk of the County Commission of Kanawha, West Virginia to permit the City of Charleston a right-of-entry on the subject properties for the purpose of construction, operation, maintenance, rehabilitation, and removal of the subject facilities. The City of Charleston's title thereto is defeasible in the event the City of Charleston does not satisfy any resulting judgment and/or award in the proceedings for acquisition of permanent easement and/or temporary easements on said properties, and our certification is subject to the pending litigation.

11-MISC-548 Donald Ray Anderson Jr. et. al. (NC91/parcel 201)	Order Granting Petitioner Immediate Right of Entry, Possession, and Use – November 28, 2011
11-MISC-541 David Burdette (NC27/parcel 104)	Order Granting Petitioner Immediate Right of Entry, Possession, and Use – November 28, 2011
11-MISC-551 Unknown Heirs of D.K. Casto (WC1/parcel 11)	Order Granting Petitioner Immediate Right of Entry, Possession, and Use – November 29, 2011
11-MISC-561 Kathern Casto (NC23/parcel 4.6)	Order Granting Petitioner Immediate Right of Entry, Possession, and Use – November 29, 2011
11-MISC-552 Charleston Welding Co. LLC (WC1/parcel 101)	Order Granting Petitioner Immediate Right of Entry, Possession, and Use – December 1, 2011

11-MISC-546 George R. Counts, Jr. (NC91/parcel 242)	Order Granting Petitioner Immediate Right of Entry, Possession, and Use – November 23, 2011
11-MISC-532 James R. and Juanita G. Cunningham (NC19/parcel 13)	Order Granting Petitioner Immediate Right of Entry, Possession, and Use – November 17, 2011
11-MISC-558 John Dorsey (NC91/parcels 111 and 112)	Order Granting Petitioner Immediate Right of Entry, Possession, and Use – November 30, 2011
11-MISC-462 Leonard Fields (NC90/parcel 178)	Order Granting Petitioner Immediate Right of Entry, Possession, and Use – October 17, 2011
11-MISC-527 Steven and Karen Fisher (NC23/parcel 4.5)	Order Granting Petitioner Immediate Right of Entry, Possession, and Use – November 21, 2011 (Amended Order November 30, 2011)
11-MISC-554 Brian Foster, et.al. (NC23/parcel 4.2)	Order Granting Petitioner Immediate Right of Entry, Possession, and Use – November 30, 2011
11-MISC-445 Unknown Heirs of Orletta Harper (NC16/parcel 34)	Order Granting Petitioner Immediate Right of Entry, Possession, and Use – October 7, 2011
11-MISC-573 Eunice Haynes (NC16/parcel 85)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - December 2, 2011
11-MISC-408 Jay D. Hughart (NC23/parcel 4.8)	Order Granting Petitioner Immediate Right of Entry - September 14, 2011 (Amending Order - November 10, 2011)
11-MISC-409 Walter and Drema Hughart (NC 23/parcels 4 and 4.1)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - September 14, 2011
11-MISC-556 Walter D. and Drema F. Hughart (NC23/parcel 5)	Order Granting Petitioner Immediate Right of Entry, Possession and Use -November 29, 2011
11-MISC-560 Indore Baptist Church (NC21/parcel 124)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - December 1, 2011
11-MISC-543 Reuben Johnson (NC27/parcel 103)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - November 22, 2011
11-MISC-529 Travis R. Jordan (NC19/parcel 12)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - November 17, 2011
11-MISC-495 Brailford Keeton (NC90/parcel 202)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - October 28, 2011
11-MISC-553 L.T. and Aretta Kelley (NC28/parcel 34)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - November 29, 2011
11-MISC-568 L.T. and Aretta Kelley, Alvin L. Engelke, and H3LLC (NC83/parcel 92)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - November 30, 2011
11-MISC-578 William T. Lively, Jr. Revocable Trust (WC/parcels 121 and 124)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - December 5, 2011
11-MISC-562 Joe E. and Tamrya L. Martin (WC9/parcels 8 and 9)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - November 30, 2011
11-MISC-461 Joseph M. Mason (NC21/parcels 118 and 119)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - November 9, 2011

11-MISC-580 Algernon E. Monroe II, Shunn N. Monroe a/k/a Shaunn N. Monroe, and Unknown Heirs of Algernon E. Monroe, Jr. (NC18/parcel 3)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - December 5, 2011
11-MISC-531 Pamela M. and Hershel R. Murphy (NC90/parcel 173)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - November 17, 2011
11-MISC-569 NAJ LLC (WC4/parcel 125, NC90/parcel 4, NC90/parcel 175)	Order Granting Petitioner Immediate Right of Entry, Possession and Use – December 2, 2011
11-MISC-566 P&J Real Estate LLC (NC28/parcel 29)	Order Granting Petitioner Immediate Right of Entry, Possession and Use – December 2, 2011
11-MISC-577 Unknown Heirs of Pearl Reveal (NC28/parcel 28)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - December 1, 2011
11-MISC-559 Guy Rhodes (NC27/parcel 123)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - November 30, 2011
11-MISC-539 Samuel C. Rivers or Unknown Heirs of Samuel C. Rivers (WC4/parcel 13)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - November 22, 2011
11-MISC-572 Rodel Properties LLC (NC28/parcel 30)	Order Granting Petitioner Immediate Right of Entry, Possession and Use – December 1, 2011
11-MISC-582 John L. and Barbara Summers (NC12/parcel 36)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - December 5, 2011
11-MISC-574 Jodi and Debra Ann Taylor (NC91/parcel 228)	Order Granting Petitioner Immediate Right of Entry, Possession and Use – December 2, 2011
11-MISC-583 Unknown Heirs of Helen J. Thomas (WC1/parcels 121 and 122)	Order Granting Petitioner Immediate Right of Entry, Possession and Use – December 2, 2011
11-MISC-494 Richard H. and Suzette D. Vinyard (NC24/parcel 21)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - October 28, 2011
11-MISC-530 Edward G. and Patricia M. Walker (NC19/parcels 10 and 11)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - November 22, 2011
11-MISC-547 Shawnetta A. Whittington (NC91/parcel 200 & NC92/parcel 47.2)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - November 28, 2011
11-MISC-528 Charles W. and Karen J. Wickline (NC23/parcel 4.3)	Order Granting Petitioner Immediate Right of Entry, Possession and Use - November 18, 2011
11-MISC-579 Gary K. Young and Mark A. Young (NC28/parcel 17)	Order Granting Petitioner Immediate Right of Entry, Possession and Use – December 2, 2011

5. That any deeds or other documents requiring record notice which have been acquired to date by the City of Charleston or the Sanitary Board have been duly recorded in the aforesaid Clerk's office in order to protect the legal title to and interest of the City of Charleston.

6. This final title opinion is based upon a limited search of and relies on the correctness and accuracy of the records, indices of records and recitals of the records in the aforesaid Clerk's office and the Office of the Assessor of Kanawha County. This opinion is subject to any facts, rights, interests, or claims which are not shown by the records contained in the aforesaid Clerk's office or Assessor's office and any discrepancies, conflicts and inaccuracies in boundary lines, errors in acreage, encroachments, or any other facts which a correct and accurate survey of the subject properties would disclose. This opinion is further subject to the accuracy of the information provided to us by Burgess & Niple, including but not limited to, the list of easements to be acquired for the Project.

This opinion is rendered only for the benefit of the addressees and may not be relied upon by any other party without our prior written consent. No attorney-client privilege is waived or intended to be waived by this opinion. If you have any questions regarding any of the information contained in this opinion, please contact this office.

Sincerely,

Spilman Thomas & Battle, PLLC

SPILMAN THOMAS & BATTLE, PLLC

cc: Larry Roller
3257645

JACKSONKELLY
ATTORNEYS AT LAW PLLC
500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
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4.5

December 13, 2011

The City of Charleston
P.O. Box 2749
Charleston, WV 25330

West Virginia Department of Environmental Protection
1560 Kanawha Boulevard, East
Charleston, WV 25311

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311

Re: The City of Charleston
Sewerage System Revenue Bonds, Series 2011 A
(West Virginia CWSRF Program)

Ladies and Gentlemen:

We have served as counsel to The City of Charleston (the "Issuer"), a municipal corporation, in connection with the issuance of its Sewerage System Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), dated the date hereof (the "Bonds").

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a loan agreement for the Bonds dated December 13, 2011, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Loan Agreement. We have also examined the applicable provisions of the Act and a Bond Ordinance duly passed by the Issuer on September 6, 2011, effective September 19, 2011, as supplemented by a Supplemental Resolution duly adopted by the Issuer on December 5, 2011 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and

{C2199641.1}

issued, and the Loan Agreement has been entered into. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and in the Loan Agreement when used herein.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. All successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon our review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, we are of the opinion that such surety bonds and policies: (1) are in compliance with the contracts as proposed to be modified by Change Orders No.1 in the case of Combined Contracts 10-7 and 10-9 and Contract 10-8 and Change Order No. 2 in the case of Contract 10-6, Combined Contracts 10-7 and 10-9; (2) are adequate in form, substance and amount to protect the various interest of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Ordinance and the Loan Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

2. The contracts contain language requiring the contractors to provide affidavits from all contractors and subcontractors indicating that each contractor and subcontractor have a drug free workplace policy pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, as amended. The contractor has submitted a plan to implement the drug free workplace policy prior to the awarding of the contract pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, as amended.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

Jackson Kelly, PLLC