THE CITY OF ELKINS
SEWER REVENUE BONDS, SERIES 2008 A

DATE OF CLOSING: MAY 16, 2008

BONDS TRANSCRIPT

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THE CITY OF ELKINS

Sewer Revenue Bonds, Series 2008 A

BOND TRANSCRIPT

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03.17.08
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Ordinance No. 073

THE CITY OF ELKINS
SEWER REVENUE BONDS, SERIES 2008 A

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THE CITY OF ELKINS

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF ELKINS AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $650,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2008 A; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF ELKINS:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Elkins (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and improvements to the existing public sewerage system of the Issuer, consisting of construction

of a lift station, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification, or disposal of liquid or solid wastes, residential sewage or industrial waste (the existing public sewerage system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2008 A, in the total aggregate principal amount of not more than $650,000 (the "Series 2008 A Bonds"), initially to be represented by a single bond, to permanently finance the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Series 2008 A Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 2008 A Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2008 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the acquisition or construction of the Project and the placing of same in operation; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2008 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

D. The period of usefulness of the System after completion of the Project is not less than 20 years.

E. It is in the best interests of the Issuer that its Series 2008 A Bonds be sold to the Purchaser (as hereinafter defined) pursuant to this Bond Legislation

F. There will be outstanding obligations of the Issuer which will rank on a parity with the Series 2008 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's: (i) Supplemental Subordinate Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority), dated April 28, 1986, issued in the original aggregate principal amount of $517,001 (the "Series 1986 B Bonds"); (ii) the Sewer Revenue Bonds, Series 1996 A, (West Virginia SRF Program) dated August 22, 1996, issued in the original aggregate principal amount of $300,000 (the "Series 1996 A Bonds"); (iii) the Sewer Refunding Revenue Bonds, Series 2004 A, dated June 18, 2004, issued in the original

aggregate principal amount of $1,022,000, (the "Series 2004 A Bonds"); and (iv) the Sewer Revenue Bonds, Series 2006 A, (West Virginia SRF Program) dated December 7, 2006, issued in the original aggregate principal amount of $8,588,400 (the "Series 2006 A Bonds) (collectively, the "Prior Bonds").

The Series 2008 A Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2008 A Bonds, the Issuer will obtain the written consent of the Holders of the Prior Bonds to the issuance of the Series 2008 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all covenants of the Prior Bonds and Prior Ordinances.

G. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Bonds (as hereinafter defined) and to make all payments into all funds, accounts and other payments provided for herein.

H. The Issuer has complied with all requirements of West Virginia law relating to authorization of the acquisition and construction of the Project and the operation of the System and issuance of the Series 2008 A Bonds, or will have so complied prior to issuance of any thereof.

I. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Governing Body to issue the Series 2008 A Bonds for the purposes set forth herein.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2008 A Bonds by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2008 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means Chapter 16, Article 13 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Board" means the Sanitary Board of the Issuer.

"Bondholder," "Holder of the Bonds," "Holder," "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means, collectively, the Series 2008 A Bonds, the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"Closing Date" means the date upon which there is an exchange of the Series 2008 A Bonds for all or a portion of the proceeds of the Series 2008 A Bonds.

"City Clerk" means the City Clerk of the Issuer.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Consulting Engineers" means Burgess & Niple, Inc., Parkersburg, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02C hereof to be a part of the cost of acquisition and construction of the Project.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Council of the Issuer, as it may now or hereafter be constituted.

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

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided that, "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Investment Property" means

(A) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code),

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

Except as provided in the following sentence, the term "Investment Property" does not include any tax-exempt bond. With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)© of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

"Issuer" means The City of Elkins, a municipal corporation and political subdivision of the State of West Virginia, in Randolph County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2008 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2008 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2008 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Nonpurpose Investment" means any Investment Property as defined in Section 148(b) of the Code, that is not a purpose investment.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, fees and expenses of the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond cancelled by the Bond Registrar or the registrar for Prior Bonds at or prior to said date; (ii) any Bond for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid in accordance with the resolution authorizing the issuance thereof; and (v) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or other entity or authority designated as such for the Series 2008 A Bonds in the Supplemental Resolution.

"Prior Bonds" means, collectively, the Series 1986 B Bonds, Series 1996 A Bonds, Series 2004 A Bonds, and Series 2006 A Bonds.

"Prior Ordinances" means, collectively, the ordinances of the Issuer, including all amendments and supplements thereto, authorizing the issuance of the Prior Bonds.

"Private Business Use" means 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.

"Project" means the Project as described in Section 1.02B hereof.

"Purchaser" means the purchaser or purchasers of the Series 2008 A Bonds directly from the Issuer, designated as such in the Supplemental Resolution and its successors and assigns.

"Qualified Investments" means and includes any of the following:

(a) Government Obligations;

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

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

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

(I) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Recorder" means the Recorder of the Issuer.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond is registered.

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Ordinances and continued hereby.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Series 2008 A Bonds and the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amount required to be on deposit in any Reserve Account for the Prior Bonds and the Series 2008 A Bonds.

"Revenue Fund" means the Revenue Fund created by the Prior Ordinances and continued hereby.

"Series 1986 B Bonds" means the Issuer's Supplemental Subordinate Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority), dated April 28, 1986, issued in the original aggregate principal amount of $517,001.

"Series 1996 A Bonds" means the Issuer's Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated August 22, 1996, issued in the original aggregate principal amount of $300,000.

"Series 2004 A Bonds" means the Issuer's Sewer Refunding Revenue Bonds, Series 2004 A, dated June 18, 2004, issued in the original aggregate principal amount of $1,022,000.

"Series 2006 A Bonds" means the Issuer's Sewer Revenue Bonds, Series 2006 A (West Virginia SRF Program), dated December 7, 2006, issued in the original aggregate principal amount of $8,588,400.

"Series 2008 A Bonds" means Sewer Revenue Bonds, Series 2008 A of the Issuer, authorized by this Bond Legislation.

"Series 2008 A Bonds Construction Trust Fund" means the Series 2008 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2008 A Bonds Reserve Account" means the Series 2008 A Bonds Reserve Account established by Section 5.02 hereof.

"Series 2008 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2008 A Bonds in the then current or any succeeding year.

"Series 2008 A Bonds Sinking Fund" means the Series 2008 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective sinking funds established for the Series 2008 A Bonds and the Prior Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2008 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2008 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligation of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

"System" means, collectively, the complete existing municipal sewage treatment and collection system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any and all additions, betterments and

improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, both within and without the Issuer.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

Additional terms and phrases are defined in this Ordinance as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed $650,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2008 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project.

The cost of the Project is estimated not to exceed $650,000, of which $650,000 will be obtained from proceeds of the Series 2008 A Bonds.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS

Section 3.01. Authorization of Bonds. For the purposes of funding a reserve account for the Series 2008 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance 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 negotiable Series 2008 A Bonds of the Issuer. The Series 2008 A Bonds shall be issued as a single bond, designated "Sewer Revenue Bond, Series 2008 A", in the principal amount of not more than $650,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2008 A Bonds remaining after funding of the Series 2008 A Bonds Reserve Account (if funded from Bond proceeds) and capitalizing interest on the Series 2008 A Bonds, if any, shall be deposited in or credited to the Series 2008 A Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2008 A Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution. The Series 2008 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2008 A Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Purchaser is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2008 A Bonds shall initially be issued in the form of a single bond, fully registered to the Purchaser, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2008 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2008 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Purchaser shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest, if any, as of the date specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2008 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2008 A Bonds shall cease to be such officer of the Issuer before the Series 2008 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2008 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of the authorization of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2008 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2008 A Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2008 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2008 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2008 A Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Series 2008 A Bonds.

The registered Series 2008 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly

authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2008 A Bonds or transferring the registered Series 2008 A Bonds are exercised, all Series 2008 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2008 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2008 A Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2008 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2008 A Bonds or, in the case of any proposed redemption of Series 2008 A Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2008 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2008 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Holder or Holders of the Series 2008 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2008 A Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Positions with respect to Prior Bonds. The payment of the debt service of all Series 2008 A Bonds shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived

from the operation of the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2008 A Bonds and the Prior Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2008 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2008 A Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Purchaser, a list of the names in which the Series 2008 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2008 A Bonds to the Purchaser;

C. An executed and certified copy of the Bond Legislation; and

D. The unqualified approving opinion of bond counsel on the Series 2008 A Bonds.

Section 3.10. Sale of Bonds. The Series 2008 A Bonds shall be sold to the Purchaser, pursuant to this Bond Legislation.

Section 3.11. Form of Bonds. The text of the Series 2008 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2008 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF ELKINS
SEWER REVENUE BONDS, SERIES 2008 A

No. AR-____ $_____

KNOW ALL MEN BY THESE PRESENTS: This ____ day of March, 2008, that The City of Elkins, a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the sources and in the manner hereinafter set forth, to the order of:

THE HUNTINGTON NATIONAL BANK

or registered assigns (the "Registered Owner"), the principal sum of_____($_____) or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference together with interest only payable monthly on the outstanding principal amounts beginning _____, 2008 to and including _____, 2009 and principal and interest payments of $_____ payable monthly beginning _____, 2009 to and including _____, 2019 at the rates per annum set forth as follows:

A. Interest on this Bond shall be payable at the rate of _____% per annum (hereinafter sometimes called the "Tax-Exempt Rate").

a. Notwithstanding any other provision herein, in the event the interest on this Bond is declared to be includible in gross income for federal income tax purposes by the Internal Revenue Service ("Determination of Taxability"), interest on this Note shall be payable at the rate of ____% per annum (hereinafter sometimes called the "Taxable Rate"). Interest at the Taxable Rate shall commence to accrue on the date of Determination of Taxability and such interest rate shall be charged retroactively and prospectively for all periods in which interest paid on this Note is asserted, declared or determined to be includible in gross income for federal income tax purposes, and shall continue until the entire principal of and interest on this Note are paid, notwithstanding that the entire principal amount of this Note may

have been paid in full prior to the Determination of Taxability. Any interest being past due on this Note by reason of such increase shall become immediately due and payable.

The principal of and interest on this Note are payable in any coin or currency which on the date of payment thereof is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia as Paying Agent.

This Bond may be redeemed prior to its stated date of maturity in whole or in part with no prepayment penalty.

This Bond is issued (I) to pay the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or 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 West Virginia Code of 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2008, and a Supplemental Resolution duly adopted by the Issuer on _____, 2008 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S: (I) SUPPLEMENTAL SUBORDINATE SEWER REVENUE BONDS, SERIES 1986 B, DATED APRIL 28, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $517,001 (THE "SERIES 1986 B BONDS"); (II) SEWER REVENUE BONDS, SERIES 1996 A, DATED AUGUST 22, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $300,000 (THE "SERIES 1996 A BONDS"); (III) SEWER REFUNDING REVENUE BOND, SERIES 2004 A, DATED JUNE 18, 2004, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,022,000, (THE "SERIES 2004 A BONDS"); AND (IV) SEWER REVENUE BONDS, SERIES 2006 A, DATED DECEMBER 7, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $8,588,400 (THE "SERIES 2006 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the Holders of the Prior Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the

"Series 2008 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2008 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bonds; provided however, that so long as there exists in the Series 2008 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or junior to the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of The Huntington National Bank, (the "Registrar") (as defined in the Bond Legislation), 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.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

This Bond is, under the Act, exempt from all taxation by the State of West

Virginia, or any county, municipality, political subdivision or agency thereof, except inheritance, estate and transfer taxes.

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 Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, THE CITY OF ELKINS has caused this Bond to be signed by its Mayor, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated the day and year first written above

[SEAL]

_____
Mayor

ATTEST:

_____
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2008 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2008.

THE HUNTINGTON NATIONAL BANK,
as Registrar

_____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

	AMOUNT	DATE		AMOUNT	DATE
(1)	$		(19)	$	
(2)	$		(20)	$	
(3)	$		(21)	$	
(4)	$		(22)	$	
(5)	$		(23)	$	
(6)	$		(24)	$	
(7)	$		(25)	$	
(8)	$		(26)	$	
(9)	$		(27)	$	
(10)	$		(28)	$	
(11)	$		(29)	$	
(12)	$		(30)	$	
(13)	$		(31)	$	
(14)	$		(32)	$	
(15)	$		(33)	$	
(16)	$		(34)	$	
(17)	$		(35)	$	
(18)	$		(36)	$	

TOTAL $_____

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

(1) Revenue Fund (established by the Prior Ordinances);

(2) Renewal and Replacement Fund (established by the Prior Ordinances);

(3) Rebate Fund (established by the Prior Ordinances); and

(4) Series 2008 A Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

(1) Series 1986 B Bonds Sinking Fund (established by Prior Ordinance);

(2) Series 1986 B Bonds Reserve Account (established by Prior Ordinance);

(3) Series 1996 A Bonds Sinking Fund (established by Prior Ordinance);

(4) Series 1996 A Bonds Reserve Account (established by Prior Ordinance);

(5) Series 2004 A Bonds Sinking Fund (established by Prior Ordinance);

(6) Series 2004 A Bonds Reserve Account (established by Prior Ordinance);

(7) Series 2006 A Bonds Sinking Fund (established by Prior Ordinance);

(8) Series 2006 A Bonds Reserve Account (established by Prior Ordinance);

(9) Series 2008 A Bonds Sinking Fund; and

(10) Series 2008 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinances and this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation and in the Prior Ordinances. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner order of priority:

(1) The Issuer shall first, each month, pay from the Revenue Fund to pay current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit (i) to the Commission the amounts required by the Prior Ordinances to pay interest on, if any, the Prior Bonds; and (ii) to the Commission commencing the first date of payment of interest on the Series 2008 A Bonds the required amount of interest coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit (i) to the Commission the amounts required by the Prior Ordinances to the principal of the Prior Bonds; and (ii) commencing the first date of payment of principal of the Series 2008 A Bonds, to the Commission the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) the amount required by the Prior Ordinances for deposit in the respective Reserve

Accounts of the Prior Bonds; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2008 A Bonds, if not fully funded upon issuance of the Series 2008 A Bonds, for deposit in the Series 2008 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2008 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2008 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 2008 A Bonds Reserve Requirement.

(5) The Issuer 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 ½% 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 Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

Monies in the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account shall be used only for the purposes of paying principal of and interest, if any, on the Series 2008 A Bonds as the same shall come due and for no other purpose.

All investment earnings on monies in the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2008 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 2008 A Bonds and

then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2008 A Bonds Reserve Account which result in a reduction in the balance of the Series 2008 A Bonds Reserve Account to below the Series 2008 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the priority as set forth above.

As and when additional Bonds ranking on a parity with the Series 2008 A Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2008 A Bonds Reserve Account therein when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2008 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2008 A Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2008 A Bonds Reserve Account created hereunder, and all required amounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

Monies in the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2008 A Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month), deposit with the Commission the required reserve account payments with respect to the Series 2008 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due.

E. The monies in excess of the sum insured by the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03 and the relevant provisions of the Prior Ordinances, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

G. All remittances made by the Issuer to the Commission and the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

H. The Gross Revenues of the System shall only be used for purposes of the System.

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2008 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2008 A Bonds, there shall be deposited with the Commission in the Series 2008 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2008 A Bonds Reserve Account.

B. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2008 A Bonds, such monies shall be deposited with the Depository Bank in the 2008 A Bonds Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02 hereof, and until expended, are hereby pledged as additional security for the Series 2008 A Bonds.

Section 6.02. Disbursements From the Series 2008 A Bonds Construction Trust Fund. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2008 A Bonds Construction Trust Fund shall be made only after submission to the Purchaser of written approved from the Issuer.

Pending such application, monies in the Series 2008 A Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2008 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2008 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2008 A Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2008 A Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Series 2008 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2008 A Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Prior Bonds. The payment of the debt service of the Series 2008 A Bonds shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on the Prior Bonds and the Series 2008 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved and described in the sewer rate ordinance of the Issuer enacted November 9, 2006, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2008 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take

all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2008 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2008 A Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 2008 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2008 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2008 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2008 A Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2008 A Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of design, acquisition or construction of additions, extensions, betterments or

improvements to the System or refunding any outstanding Bonds, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

(1) The Bonds then Outstanding;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates adopted by the Issuer and approved by the Public Service Commission of West Virginia, the period for appeal of which has expired prior to the date of issuance of such additional parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of an Independent Certified Public Accountant, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate construction or acquisition of such extensions or improvements, if any, to the System that are to be financed by such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds

issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System and their source of and security for payment from said Net Revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2008 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2008 A Bonds.

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of the Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

Any certifications requiring computations establishing that debt service coverage is sufficient to support the issuance of parity Additional Bonds or that requisite debt service savings are available to support the issuance of refunding bonds shall, in all cases, be evidenced by a certificate of an Independent Certified Public Accountant.

No additional bonds, notes, certificates, contracts or any other obligations shall be issued by the City unless no Event of Default shall have occurred and be continuing with respect to the Bonds.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted

accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Governing Body. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public 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 said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2008 A Bonds.

Subject to the terms, conditions and provisions of Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

Section 7.09. Rates. Prior to the issuance of the Series 2008 A Bonds, equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (I) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2008 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2008 A Bonds, including the Prior Bonds; provided that, in the event the amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2008 A Bonds Reserve Account and any Reserve Accounts for obligations on a parity with or junior to the Series 2008 A Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the

maximum amount required in any year for payment of principal of and interest, if any, on the Series 2008 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2008 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04 hereof.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers stating, among other things, that the Project has been or will be constructed in accordance with the plans, specifications and designs, the Project is adequate for the purposes for which it was designed, the funding plan is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services 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.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and

shut off the services of the System, and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the water facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water 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 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2008 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the prime contractor and all subcontractors as their respective interests

may appear, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than $500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall 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 Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project. The Issuer shall verify such insurance prior to commencement of construction. Such insurance shall be made payable to the order of the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion and Operation of Project; Permits and Orders. The Issuer shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by State and federal laws for the acquisition and construction of the Project.

Section 7.18. Compliance with Law. The Issuer shall perform, satisfy and

comply with all the terms and conditions of the Act.

The Issuer shall also comply with all applicable laws, rules and regulations issued by the State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System. The Issuer will provide the 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).

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (I) not in excess of 10% of the Net Proceeds of the Series 2008 A Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2008 A Bonds during the term thereof is, under the terms of the Series 2008 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2008 A Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2008 A Bonds during the term thereof is, under the terms of the Series 2008 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2008 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2008 A Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% or $5,000,000 of the Net Proceeds of the Series 2008 A Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2008 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2008 A Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it so that the interest on the Series 2008 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions the result of which would adversely affect such exclusion.

Section 7.20. Reserved

Section 7.21. Contracts. The Issuer shall, simultaneously with the delivery of the Series 2008 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

Section 7.22. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2008 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2008 A Bonds, and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

ARTICLE VIII

INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01. Investments. Any monies held as a part of the funds and accounts created by this Bond Legislation other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own 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 Issuer, at least once each year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2008 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 2008 A Bonds from gross income for federal income tax purposes.

Section 8.02. Arbitrage and Tax Exemption. The Issuer covenants that (I) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2008 A Bonds which would cause the Series 2008 A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2008 A Bonds) so that the interest on the Series 2008 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2008 A Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2008 A Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer covenants to 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 Purchaser, the Issuer shall deposit, or cause to be deposited, in 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 and shall be used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Purchaser 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 Purchaser at the expense of the Issuer. The Issuer may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 8.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount, any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to maintain the exclusion of interest on the Series 2008 A Bonds from gross income for federal

income tax purposes.

The Issuer shall furnish to the Purchaser, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Purchaser. In addition, the Issuer shall cooperate with the Purchaser in preparing any required 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 Purchaser at the expense of the Issuer.

The Issuer shall submit to the Purchaser 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 Issuer qualifies for the small governmental issue exception to rebate, or any other exception thereto, then the Issuer shall submit to the Purchaser a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 2008 A Bonds subject to rebate. The Issuer shall also furnish to the Purchaser, at any time, such additional information relating to rebate as may be reasonably requested by the Purchaser including information with respect to earnings on all funds constituting "gross proceeds" of the Series 2008 A Bonds (as such term "gross proceeds" is defined in the Code).

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2008 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2008 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2008 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2008 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or

(3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (I) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2008 A Bonds shall be on a parity with the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond

may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, 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 such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might exercise.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and

making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2008 A Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2008 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2008 A Bonds from gross income for federal income tax purposes.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2008 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2008 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2008 A Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2008 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2008 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest, if any, on the Series 2008 A Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2008 A Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2008 A Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed. Except for the Prior Ordinances, all ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed; provided that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior

Ordinances shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Recorder, the City Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Appointment. The Issuer does hereby appoint, designate and approve the hiring of Steptoe & Johnson, Clarksburg, West Virginia, as bond counsel to the Issuer in connection with the issuance by the Issuer of the Series 2008 A Bonds.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in *The Inter Mountain*, a newspaper published and of general circulation in The City of Elkins, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2008 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Section 11.09. Effective Date. This Ordinance shall take effect immediately following the public hearing and final reading hereof.

[Remainder of Page Intentionally Blank]

Passed on First Reading:	-	February 21, 2008
Passed on Second Reading:	-	March 6, 2008
Passed on Final Reading Following Public Hearing:	-	March 20, 2008

Judith A. Hunze
Mayor

CERTIFICATION

Certified a true copy of a Conformed Ordinance duly enacted by the Council of The City of Elkins on the 20th day of March, 2008 as supplemented by Supplemental Resolution on the 15th day of May, 2008.

Dated: May 16, 2008.

[SEAL]

Philip J. Grozani
City Clerk

04.28.08
255620.00016

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 2008 A

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2008 A OF THE CITY OF ELKINS; AND THE SALE AND DELIVERY OF SUCH BONDS TO THE HUNTINGTON NATIONAL BANK; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; GRANTING AUTHORITY TO SANITARY BOARD TO APPROVE REMAINING DRAWS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of The City of Elkins (the "Issuer") has duly and officially adopted and enacted a bond ordinance, effective March 20, 2008 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF ELKINS AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $650,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2008 A; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds, Series 2008 A, of the Issuer (the "Bonds" or the "Series 2008 A Bonds"), in an aggregate principal amount not to exceed $650,000, all in accordance with Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and in the Bond Ordinance it is provided that the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, it is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2008 A (the "Bonds") in an aggregate principal amount of not more than $650,000, to finance the costs of acquisition and construction of the Project and costs of issuance of the Bonds and related costs;

WHEREAS, the Bonds are proposed to be purchased by The Huntington National Bank, Elkins, West Virginia (the "Purchaser"); and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the exact principal amount, the date, the maturity date, the redemption provision, the interest rate, the interest and principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ELKINS:

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 2008 A, of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of $600,000. The Series 2008 A Bonds shall be dated the date of delivery thereof, shall finally mature May 5, 2019, and shall bear interest at the rate of 5.25% per annum. Interest only payments on the Series 2008 A Bonds shall be payable monthly, commencing June 5, 2008, to and including May 5, 2009. Principal of and interest payments of $6,459.10 on the Series 2008 A Bonds shall be payable monthly commencing June 5, 2009, to and including May 5, 2019. The Series 2008 A Bonds may be prepaid at any time without penalty.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 3. The Bonds shall be sold to The Huntington National Bank, Elkins, West Virginia, and shall be registered in the name of such bank. The price of the Bonds shall be 100% of par value, there being no accrued interest accrued thereon.

Section 4. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, West Virginia, to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 5. The Issuer does hereby appoint and designate the The Huntington National Bank, West Virginia, to serve as Registrar and Depository Bank for the Bonds under the Bond Ordinance.

Section 6. Series 2008 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2008 A Bonds Sinking Fund as capitalized interest.

Section 7. Series 2008 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2008 A Bonds Reserve Account.

Section 8. The balance of the proceeds of the Series 2008 A Bonds shall be deposited in or credited to the Series 2008 A Bond Construction Trust Fund as received from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 9. The Mayor and the City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about May 16, 2008, to the Purchaser.

Section 10. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 11. The Issuer does hereby approve and authorize all contracts relating to the financing, acquisition and construction of the Project.

Section 12. The Issuer hereby determines to invest all monies in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Monies in the Series 2008 A Bonds Reserve Account shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 13. The Issuer hereby appoints and designates the Sanitary Board, and the Authorized Officers thereof, as its agent (i) for the review and approval of all invoices

for the Project to be paid from the proceeds of the Series 2008 A Bonds; (ii) for the approval of all remaining draws of the proceeds of the Series 2008 A Bonds; and (iii) to act on and execute documents on behalf of the Issuer for any and all federal and state actions as they relate to the planning, design and/or construction of the Project.

Section 14. The Issuer hereby approves the Conformed Bond Ordinance attached hereto as Exhibit A.

Section 15. This Supplemental Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Blank]

Adopted this 15th day of May, 2008.

THE CITY OF ELKINS

By: Judith A. Kruze
Its: Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The City of Elkins on the 15th day of May, 2008.

Dated: May 16, 2008.

[SEAL]

Philip J. Grozani
City Clerk

04.28.08
255620.00016

EXHIBIT A

CONFORMED BOND ORDINANCE

See Tab 1 of Transcript

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 2008 A
(The Huntington National Bank)

CROSS-RECEIPT FOR BOND AND BOND PROCEEDS

The undersigned authorized representative of The Huntington National Bank, Elkins, West Virginia (the "Purchaser"), and the undersigned Mayor of The City of Elkins (the "Issuer"), hereby certify this 16th day of May, 2008 as follows:

1. On May 16, 2008, at Elkins, West Virginia, the Purchaser received The City of Elkins Sewer Revenue Bonds, Series 2008 A, No. AR-1 (the "Bonds"), issued as a single Bond in the principal amount of $600,000, dated May 16, 2008. The Bonds represent the entire above-captioned Bond issue.

2. At the time of such receipt, the Bonds had been executed and sealed by the designated officials of the Issuer.

3. The Issuer has received and hereby acknowledges receipt from the Purchaser of the sum of $8,000, being the initial advance of principal of the Bonds.

4. This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

[Remainder of Page Intentionally Left Blank]

WITNESS our respective signatures dated the day and year first written above.

THE HUNTINGTON NATIONAL BANK

By:_____
Its: Authorized Officer

THE CITY OF ELKINS

By: Judith A. Yeager
Its: Mayor

04.28.08
255620.00016

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 2008 A
(The Huntington National Bank)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

The Huntington National Bank,
as Registrar
Elkins, West Virginia

Ladies and Gentlemen:

As of the 16th day of May, 2008, there are delivered to you herewith as Registrar for the above-captioned Bonds:

1. Bond No. AR-1, constituting the entire original issue of The City of Elkins Sewer Revenue Bonds, Series 2008, dated May 16, 2008, in the principal amount of $600,000 (the "Bonds"), executed by the Mayor and the City Clerk of The City of Elkins (the "Issuer") and bearing the official seal of the Issuer. The Bonds are authorized to be issued under and pursuant to a Bonds Ordinance enacted by the Issuer on March 20, 2008, and a Supplemental Resolution adopted by the Issuer on May 15, 2008 (collectively, the "Ordinance").

2. A copy of the Ordinance duly certified by the City Clerk.

3. A signed, unqualified approving opinion of nationally recognized bond counsel designated by the Issuer and acceptable to the Purchaser.

4. A list of the names in which the Bonds are to be registered upon original issuance, together with taxpayer identification and other information as requested by you.

You are hereby requested and authorized to authenticate, register and deliver the Bonds to The Huntington National Bank, Elkins, West Virginia, as the Purchaser thereof.

[Remainder of Page Intentionally Blank]

Dated as of the day and year first written above.

THE CITY OF ELKINS

By: Judith A. Guye
Its: Mayor

04.28.08
255620.00016

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF ELKINS
SEWER REVENUE BONDS, SERIES 2008 A

No. AR-1 $600,000

KNOW ALL MEN BY THESE PRESENTS: This 16th day of May, 2008, that The City of Elkins, a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the sources and in the manner hereinafter set forth, to the order of:

THE HUNTINGTON NATIONAL BANK

or registered assigns (the "Registered Owner"), the principal sum of SIX HUNDRED THOUSAND DOLLARS ($600,000) or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference together with interest only payable monthly on the outstanding principal amounts beginning June 5, 2008 to and including May 5, 2009 and principal and interest payments of $6,459.10 payable monthly beginning June 5, 2009 to and including May 5, 2019 at the rates per annum set forth as follows:

A. Interest on this Bond shall be payable at the rate of 5.25% per annum (hereinafter sometimes called the "Tax-Exempt Rate").

B. Notwithstanding any other provision herein, in the event the interest on this Bond is declared to be includible in gross income for federal income tax purposes by the Internal Revenue Service ("Determination of Taxability"), interest on this Bond shall be payable at the rate of 8.0% per annum (hereinafter sometimes called the "Taxable Rate"). Interest at the Taxable Rate shall commence to accrue on the date of Determination of Taxability and such interest rate shall be charged retroactively and prospectively for all periods in which interest paid on this Bond is asserted, declared or determined to be includible in gross income for federal income tax purposes, and shall continue until the entire principal of and interest on this Bond are paid, notwithstanding that the entire principal amount of this Bond may have been paid in full prior to the Determination of Taxability.

Any interest being past due on this Bond by reason of such increase shall become immediately due and payable.

The principal of and interest on this Bond are payable in any coin or currency which on the date of payment thereof is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia as Paying Agent.

This Bond may be redeemed prior to its stated date of maturity in whole or in part with no prepayment penalty.

This Bond is issued (i) to pay the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or 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 West Virginia Code of 1931, as amended (the "Act"), a Bond Ordinance duly enacted by the Issuer on March 20, 2008, and a Supplemental Resolution duly adopted by the Issuer on May 15, 2008 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S: (I) SUPPLEMENTAL SUBORDINATE SEWER REVENUE BONDS, SERIES 1986 B, DATED APRIL 28, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $517,001 (THE "SERIES 1986 B BONDS"); (II) SEWER REVENUE BONDS, SERIES 1996 A, DATED AUGUST 22, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $300,000 (THE "SERIES 1996 A BONDS"); (III) SEWER REFUNDING REVENUE BOND, SERIES 2004 A, DATED JUNE 18, 2004, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,022,000, (THE "SERIES 2004 A BONDS"); AND (IV) SEWER REVENUE BONDS, SERIES 2006 A, DATED DECEMBER 7, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $8,588,400 (THE "SERIES 2006 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the Holders of the Prior Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the

"Series 2008 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2008 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bonds; provided however, that so long as there exists in the Series 2008 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or junior to the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of The Huntington National Bank, (the "Registrar") (as defined in the Bond Legislation), 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.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

This Bond is, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof, except inheritance, estate and transfer taxes.

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 Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, THE CITY OF ELKINS has caused this Bond to be signed by its Mayor, and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated the day and year first written above

[SEAL]

Judith A. Guy
Mayor

SPECIMEN

ATTEST:

Phillip J. Grazianis
City Clerk

SPECIMEN

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2008 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: May 16, 2008.

THE HUNTINGTON NATIONAL BANK,
as Registrar

SPECIMEN

Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

	AMOUNT	DATE		AMOUNT	DATE
(1)	$ 8,000	May 16, 2008	(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 $_____

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, 20___.

_____

In the presence of:

_____

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information

May 16, 2008

The City of Elkins
Sewer Revenue Bonds, Series 2008 A
(The Huntington National Bank)

The City of Elkins
Elkins, West Virginia

The Huntington National Bank
Elkins, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by The City of Elkins (the "Issuer"), a municipal corporation and political subdivision organized and existing under the laws of the State of West Virginia, of its $550,000 Sewer Revenue Bonds, Series 2008 A, dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of the Bonds, which are to be purchased by The Huntington National Bank (the "Purchaser"). The Bonds are originally issued in the form of one Bond, registered as to interest and principal to the Purchaser. The Bonds shall be dated May 16, 2008, and shall finally mature May 5, 2019, and shall bear interest at the rate of 5.25% per annum. Interest only payments shall be payable monthly commencing June 5, 2008, to and including May 5, 2009. Principal and interest payments shall be payable monthly commencing June 5, 2009, to and including May 5, 2019.

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 of the West Virginia Code of 1931, as amended (the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act, the Bond Ordinance duly enacted by the Issuer on March 20, 2008, as supplemented by a Supplemental Resolution duly adopted by the Issuer on March 20, 2008 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued. The Bonds are subject to redemption prior to maturity under the conditions and subject to the limitations set forth in the Bond Legislation. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation 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 created and validly 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 Bond Legislation and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Bond Legislation and all other necessary ordinances and resolutions have been duly and effectively enacted and adopted by the Issuer in connection with the issuance and sale of the Bonds and constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their terms.

3. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Purchaser 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: (i) Supplemental Subordinate Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority), dated April 28, 1986, issued in the original aggregate principal amount of $517,001; (ii) Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated August 22, 1996, issued in the original aggregate principal amount of $300,000; (iii) Sewer Refunding Revenue Bonds, Series 2004 A, dated June 18, 2004, issued in the original aggregate principal amount of $1,022,000; and (iv) Sewer Revenue Bonds, Series 2006 A (West Virginia SRF Program), dated December 7, 2006, issued in the original aggregate principal amount of $8,588,400.

4. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder (the "Code") and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations under the Code. It should be noted, however, that interest on the Bonds is included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax that may be imposed with respect to corporations. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth in the Ordinance, and in certain certificates delivered in connection with the issuance of the Bonds. Failure to comply with certain of such Code provisions or such certifications, covenants and representations could cause the interest on the Bonds to be includable in gross income retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds except as expressly set forth in paragraph 6.

5. The Bonds are, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof, and the interest on the Bonds, if any, is exempt from personal and corporate net income taxes imposed directly thereon by the State of West Virginia.

6. The Issuer has designated the Bonds as "qualified tax-exempt obligations" for purposes of the Code, and has covenanted that it does not reasonably expect to issue more than $10,000,000 of tax-exempt obligations (other than private activity bonds and obligations issued to currently refund any obligation of the Issuer to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligations) during the calendar year 2008. Therefore, the Bonds are "qualified tax-exempt obligations" within the meaning of Section 265(b)(3)(B) of the Code.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds and the Bond Legislation, and the liens and pledges set forth therein, may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated 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,

STEPTOE & JOHNSON PLLC

BUSCH, ZURBUCH & THOMPSON, PLLC

ATTORNEYS AT LAW
P.O. BOX 1819
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May 16, 2008

City of Elkins
Sewer Revenue Bonds, Series 2008 A
(The Huntington National Bank)

The City of Elkins
Elkins, West Virginia

The Huntington National Bank
Elkins, West Virginia

Steptoe & Johnson PLLC
Charleston, West Virginia

Ladies and Gentlemen:

We are counsel to The City of Elkins in Randolph County, West Virginia (the "Issuer"). As such counsel, we have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, a Bond Ordinance duly enacted by the Issuer on March 20, 2008, as supplemented by a Supplemental Resolution duly adopted by the Issuer on May 15, 2008, (collectively, the "Bond Legislation"), a Petition of the Sanitary Board duly adopted on March 4, 2008, and other documents relating to the above-captioned Bonds of the Issuer (the "Bonds"). All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the Loan Agreement when used herein.

We are of the opinion that:

1. The Issuer has been duly created and is validly existing as a municipal corporation and political subdivision of the State of West Virginia, and the Mayor, Recorder, City Clerk and members of the Council of the Issuer and the Sanitary Board have been duly and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Issuer in their respective capacities. The Sanitary Board has been duly created by the Issuer and is validly existing as a sanitary Board under the Act.

2. The Bond Legislation has been duly adopted and enacted by the Issuer and is in full force and effect.

3. The execution and delivery of the Bonds and the consummation of the transactions contemplated by the Bonds and the Bond Legislation 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 of or default under any ordinance, order, resolution, agreement or other instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, court order or consent decree to which the Issuer is subject.

4. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges.

5. To the best of our knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds, the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection of the Gross Revenues or the pledge of the Net Revenues for the payment of the Bonds.

6. 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. 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; (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 and the Bond Legislation; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions, and provisions thereof.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

RT. Busch

Richard T. Busch
BUSCH, ZURBUCH & THOMPSON, PLLC

RTB/jmw

LAW OFFICES
ROBERT R. RODECKER
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kelshlaw@yahoo.com

AREA CODE 304
343-1654

FACSIMILE
343-1657

May 16, 2008

The City of Elkins
Elkins, West Virginia

RE: The City of Elkins
Sewer Revenue Bonds, Series 2008 A

Ladies and Gentlemen:

I am special counsel to The City of Elkins, a municipality in Randolph County, West Virginia (the "Issuer"). As such counsel, we have represented the Issuer before the Public Service Commission of West Virginia in connection with the issuance of the above-referenced bonds and the financing of the Project. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the Loan Agreement when used herein.

I am of the opinion that:

The Issuer has received all orders, certificates and authorizations from the Public Service Commission of West Virginia necessary for the issuance of the Bonds, the Project and financing of the Project, including the Commission Order of the Public Service Commission of West Virginia ("PSC") in Case No. 06-0079-S-CN (Reopened) entered on April 17, 2008, approving the financing for the Project. The only parties to the Petition for Reopening of Case No. 06-0079-S-CN filed on March 20, 2008, were the Staff of the Commission and the City. Parties to the underlying Case No. 06-0079-S-CN were provided notice of the Petition for Reopening, but made no appearance or response to such Petition for Reopening. The Staff of the Commission does not have the right to file an appeal of the Commission decision, and the City has no intention of doing so. Given the fact that the participation of other parties in the underlying Case No. 06-0079-S-CN was addressed to the issue of rates for the resale customers, and the Order

entered on April 17, 2008 has no impact on rates, it is not anticipated that any appeal will be filed to the Order entered April 17, 2008. The time for reconsideration, reopening or appeal of all other orders entered in the proceeding has expired prior to the date hereof without any appeal having been filed. Those orders remain in full force and effect.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Sincerely,

Robert R. Rodecker

RRR/bg

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 2008 A
(The Huntington National Bank)

GENERAL CERTIFICATE OF ISSUER:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. INDEBTEDNESS
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE
10. RATES
11. PUBLIC SERVICE COMMISSION ORDER
12. SIGNATURES AND DELIVERY
13. BOND PROCEEDS
14. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
15. SPECIMEN BOND
16. CONFLICT OF INTEREST
17. EXECUTION OF COUNTERPARTS

We, the undersigned MAYOR and CITY CLERK of The City of Elkins in Randolph County, West Virginia (the "Issuer"), on this the 16th day of May, 2008, hereby certify in connection with the Issuer's Sewer Revenue Bonds, Series 2008 A, dated the date hereof (the "Bonds" or the "Series 2008 A 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 as set forth in the Bond Ordinance of the Issuer duly enacted March 20, 2008, and the Supplemental Resolution duly adopted May 15, 2008, (collectively, the "Bond Legislation").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the receipt of the Net Revenues or any grants, or in any way contesting or affecting the validity of the Bonds, or any proceedings of the Issuer taken with respect to the issuance

or sale of the Bonds, the pledge or application of the Net Revenues or any other monies or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection of the Gross Revenues or the pledge of Net Revenues as security for the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System, the imposition of rates and charges, and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the West Virginia Code of 1931, as amended, which bids remain in full force and effect.

4. INDEBTEDNESS: There are outstanding obligations of the Issuer which will rank on a parity with the Series 2008 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's: (i) Supplemental Subordinate Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority), dated April 28, 1986, issued in the original aggregate principal amount of $517,001 (the "Series 1986 B Bonds");(ii) Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated August 22, 1996, issued in the original aggregate principal amount of $300,000 (the "Series 1996 A Bonds"); (iii) Sewer Refunding Revenue Bonds, Series 2004 A, dated June 18, 2004, issued in the original aggregate principal amount of $1,022,000, (the "Series 2004 A Bonds"); and (iv) Sewer Revenue Bonds, Series 2006 A (West Virginia SRF Program) dated December 7, 2006, issued in the original aggregate principal amount of $8,588,400 (the "Series 2006 A Bonds) (collectively, the "Prior Bonds").

The Series 2008 A Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2008 A Bonds, the Issuer will, to the extent required by the Prior Ordinances, obtain the written consent of the Holders of the Prior Bonds to the issuance of the Series 2008 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all covenants of the Prior Bonds and Prior Ordinances.

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

Bond Ordinance

Supplemental Resolution

Public Service Commission Order

Charter and Rules of Procedure

Oaths of Office of Officers and Councilmembers

Ordinance Creating Sanitary Board and Oaths of Members

Petition of Sanitary Board

Sewer Rate Ordinance

Affidavit of Publication of Sewer Rate Ordinance and Notice of Public Hearing

Minutes on Adoption and Enactment of Sewer Rate Ordinance

Affidavit of Publication of Abstract of Bond Ordinance and Notice of Public Hearing

Minutes on Adoption and Enactment of Bond Ordinance and Adoption of Supplemental Resolution

Prior Bond Ordinances

Consent of West Virginia Water Development Authority

Closing Memorandum

IRS Form 8038- G

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is the "The City of Elkins." The Issuer is a municipal corporation in Randolph County and is presently existing under the laws of, and a political subdivision of, the State of West Virginia. The governing body of the Issuer is its council, consisting of a Mayor, a City Clerk and 10 councilmembers, all duly elected or appointed, as applicable, qualified and acting, and whose names and dates of commencement and termination of current terms of office are as follows:

	Date of Commencement	Date of Termination

Name			of Office	of Office
Judith Ann Guye	-	Mayor	April 1, 2007	March 31, 2009
Robert N. Beckwith	-	Councilmember	April 1, 2005	March 31, 2009
James S. Bibey	-	Councilmember	April 1, 2005	March 31, 2009
Thomas Z. Hensil	-	Councilmember	April 1, 2005	March 31, 2009
Carman L. Metheny	-	Councilmember	April 1, 2005	March 31, 2009
Karen L. Wilmoth	-	Councilmember	April 1, 2005	March 31, 2009
Van T. Broughton	-	Councilmember	April 1, 2007	March 31, 2011
Hazel K. Burford	-	Councilmember	April 1, 2007	March 31, 2011
Robert J. Malcom	-	Councilmember	April 1, 2007	March 31, 2011
Irvin D. Talbott, Jr.	-	Councilmember	April 1, 2007	March 31, 2011
Robert A. Woolwine	-	Councilmember	April 1, 2007	March 31, 2011

The duly appointed and acting members of the Sanitary Board of the Issuer are as follows:

Name		
Judith Ann Guye	-	Chairman
David L. Ice	-	Member
Randall Biller, P.E.	-	Member

The duly appointed City Clerk is Philip J. Graziani, Jr. and the acting Counsel to the Issuer is Busch, Zurbuch & Thompson, PLLC, of Elkins, West Virginia.

7. 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.

8. MEETINGS, ETC.: All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction and financing of the Project or the operation of the System were authorized or adopted at regular or special meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, including, particularly and without limitation, Chapter 6, Article 9A of the West Virginia Code of 1931, as amended, and a quorum of duly elected or appointed, as applicable, 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. CONTRACTORS' INSURANCE, ETC.: All contractors have been required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Legislation. All insurance for the System required by the Bond Legislation is in full force and effect.

10. RATES: The Issuer has duly enacted a sewer rate ordinance on November 9, 2006, setting rates and charges for the services of the System. The time for appeal of such sewer rate ordinance has expired prior to the date hereof without any appeal, and such rates are currently effective.

11. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Commission Order of the Public Service Commission of West Virginia dated April 17, 2008 in Case 06-0079-S-CN (Reopened), among other things, granting to the Issuer approving the financing for the Project. The time for appeal of the Order has not expired prior to the date hereof but the Issuer, the party to such Order, does not intend to appeal the Order. The Order remains in full force and effect.

12. SIGNATURES AND DELIVERY: On the date hereof, the undersigned Mayor did officially sign all of the Bonds of the aforesaid issue, consisting upon original issuance of a single Bond, dated the date hereof, by his or her manual signature, and the undersigned City Clerk did officially cause the official seal of the Issuer to be affixed upon said Bonds and to be attested by his or her manual signature, and the Registrar did officially authenticate and deliver the Bonds to a representative of the Purchaser as the original purchaser of the Bonds. Said official seal of the Issuer is also impressed above the signatures appearing on this certificate.

13. BOND PROCEEDS: On the date hereof, the Issuer received$8,000 from the Purchaser, being a portion of the principal amount of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

14. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in *The Inter-Mountain*, a qualified newspaper published in The City of Elkins, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in such Bond Ordinance, stating that any person interested may appear before the Governing Body at the public hearing held at a public meeting of Governing Body on the 20th day of March, 2008, at 7:00 p.m., in the Council Chambers at the City Hall and present

protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the City Clerk of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

15. SPECIMEN BOND: Delivered concurrently herewith is a true and accurate specimen of the Bond.

16. CONFLICT OF INTEREST: No member, officer or employee of the Issuer or the 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 Bond Legislation and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

17. EXECUTION OF COUNTERPARTS: This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

[Remainder of Page Intentionally Blank]

WITNESS our signatures and the official seal of the THE CITY OF ELKINS on the day and year first written above.

[CORPORATE SEAL]

SIGNATURE	OFFICIAL TITLE
Judith A. Guye	Mayor
Philip J. Grosjean	City Clerk

04.28.08
255620.00016

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 2008 A
(West Virginia SRF Program)

CERTIFICATE OF ENGINEER

I, Craig D. Richards, Registered Professional Engineer, West Virginia License No. 10358, of Burgess & Niple, Inc., Parkersburg, West Virginia, hereby certify 16th day of May, 2008, as follows:

1. My firm is engineer for the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the existing public sewerage system (the "System") of The City of Elkins (the "Issuer") to be constructed in Randolph County, West Virginia, which acquisition and construction are being permanently financed, in part, by the proceeds of the above-captioned bonds (the "Bonds") of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Bond Ordinance enacted by the Issuer on March 20, 2008, as supplemented, by Supplemental Resolution duly adopted by the Issuer on May 15, 2008.

2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; and (ii) paying certain costs of issuance of the Bonds and related costs.

3. To the best of our 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 Department of Environmental Protection and the Public Service Commission of West Virginia and any change orders approved by the Issuer, and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 20 years, if properly constructed, 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 and the Issuer's counsel, Busch, Zurbuch & Thompson, PLLC, will ascertain that all successful bidders have made required provisions for all insurance and payment and performance bonds or a contract bond and that such insurance or binders and such bonds will be 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 and the bid forms provided to the bidders contain the critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the Issuer has obtained all applicable 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 the operation of the System; (viii) the net proceeds of the Bonds, together with all other monies on deposit or to be simultaneously 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; and (ix) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

[Remainder of Page Intentionally Blank]

WITNESS my signature and seal on the day and year first written above.

BURGESS & NIPLE, INC.

(SEAL)

Craig D. Richards, P.E.
West Virginia License No. 10358

04.25.08
255620.00016

SCHEDULE B
The City of Elkins
Lift Station #11 Replacement

April 28, 2008

A. COST OF PROJECT	TOTAL	Huntington Bank	City
1 a. Construction Contract 07-1 (Michel, Inc)	410,000.00	410,000.00	0.00
b Bid Extension	41,000.00	41,000.00	0.00
c Contingency (5%)	24,000.00	24,000.00	0.00
2 Technical Services (Burgess & Niple)			
a Preliminary Design	18,400.00	18,400.00	0.00
b Final Design	52,000.00	52,000.00	0.00
c Bidding/Contract Award	13,500.00	13,500.00	0.00
d. Construction	22,000.00	22,000.00	0.00
4 Legal	5,000.00	5,000.00	0.00
5 Accounting	2,500.00	2,500.00	0.00
6 Sites & Lands			
7 a. Miscellaneous	2,500.00	2,500.00	0.00
b. Interest during construction	32,300.00	1,100.00	31,200.00
8 TOTAL of Lines 1 through 7	623,200.00	592,000.00	31,200.00
B. COST OF FINANCING			
9 Funded Reserve	0.00	0.00	0.00
10 Capitalized Interest	0.00	0.00	0.00
11 Registrar (Huntington Bank fee)	500.00	500.00	0.00
12 Bond Counsel	7,500.00	7,500.00	0.00
13 Cost of Issuance (lines 9 through 12)	8,000.00	8,000.00	0.00
14 TOTAL PROJECT COST line 8 plus line 13	631,200.00	600,000.00	31,200.00
C. SOURCES OFOTHER FUNDS			
15 Federal Grants	0.00	0.00	0.00
16 State Grants	0.00	0.00	0.00
17 Other Sources (City)	31,200.00	0.00	
18 TOTAL GRANTS Lines 15 through 17	31,200.00	0.00	0.00
19 Size of Bond Issue	600,000.00	600,000.00	31,200.00

The City of Elkins

Craig D. Richards

Burgess & Niple

Date

4/29/08

Date

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street, SE
Charleston, WV 25304
Telephone: (304) 926-0495
Fax: (304) 926-0496

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

November 19, 2007

Honorable Judith A. Guye
Mayor, City of Elkins
401 Davis Street
Elkins, WV 25311-2413

RE: City of Elkins
Lift Station bids
SRF C-544382

Dear Mayor Guye:

You are hereby authorized to advertise for bids. Please refer to our approval letter on the plans and specifications regarding any technical requirements to be met prior to opening bids. CWSRF state regulations will still apply to the project. The project should, as a minimum, be posted in newspapers as a Class II legal advertisement not less than 30 days prior to the date on which bids are to be received.

Enclosed is a copy of the SRF "Application for a Construction Loan". This completed application, including other required documents, must be submitted to our office no later than 10 calendar days after the receipt of bids in order to allow sufficient time for review, approval and processing. Should you have any questions in the interim, please contact John Tingley at 304/926-0499 ext 1603 or jtingley@wvdep.org

Sincerely,

Mike Johnson, P.E.
Program Manager
Clean Water SRF Program

RB/jt

Enclosure

c: Burgess & Niple

CITY OF ELKINS SANITARY BOARD
LIFT STATION #11 REPLACEMENT
CONTRACT 07-1
BID OPENING: December 19, 2007 at 11:00 a.m. (local time)
PROJECT NO.: 43713

				MICHEL, INC. P.O. Box 1140 Bridgeport, WV 26330 (304) 622-7923 FAX (304) 624-1252		HAYSLETT CONSTRUCTION COMPANY, INC. P.O. Box 447 Hurricane, WV 25526 (304) 757-9348 FAX (304) 757-9561		BEAR CONTRACTING, LLC 112 State Street/P.O. Box 1196 Bridgeport, WV 26330 (304) 842-3002 FAX (304) 842-9433	
ITEM	DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
1	Lift Station #11 Replacement, Complete	1	Lump Sum	$410,000.00	$410,000.00	$565,759.00	$565,759.00	$568,694.40	$568,694.40
TOTAL OF CONTRACT ITEM 1					$410,000.00		$565,759.00		$568,694.40

RECYCLED PAPER
RECYCABLE

Tetrick & Bartlett, PLLC
Certified Public Accountants
Consultants

122 N. Oak St. • PO Box 1916 • Clarksburg, WV 26302-1916 • (304) 624-5564 • Fax: (304) 624-5582 • www.tetrickbartlett.com

May 16, 2008

City of Elkins
Sewer Revenue Bonds, Series 2008 A

The City of Elkins
Elkins, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the rates and charges set forth in the sewer rate ordinance of the City of Elkins (the "Issuer"), enacted November 9, 2006, and projected operation and maintenance expenses and anticipated customer usage as furnished to us by Burgess & Niple, Inc., the consulting engineer to the Issuer, it is our opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the sewerage system of the Issuer (the "System"), will provide for all Operating Expenses of the System and leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on the Sewer Revenue Bonds, Series 2008 A (the "Bonds"), to be issued in the original aggregate principal amount of $600,000 to The Huntington National Bank on the date hereof, and all other obligations secured by or payable from the revenues of the System on a parity with the Bonds, including the Issuer's: (i) Supplemental Subordinate Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority); (ii) Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program); (iii) Sewer Refunding Revenue Bonds, Series 2004 A; and (iv) Sewer Revenue Bonds, Series 2006 A (West Virginia SRF Program) (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 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 Bonds, are not less than 115% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for the principal of and interest on the Bonds and the Prior Bonds.

Very truly yours,

Tetrick & Bartlett, PLLC

TETRICK & BARTLETT, PLLC

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 2008 A
(The Huntington National Bank)

CERTIFICATE AS TO ARBITRAGE

On this 16th day of May, 2008, the undersigned Mayor and Clerk of The City of Elkins (the "Issuer"), being the official of the Issuer charged with the responsibility for issuing the above-referenced bonds (the "Bonds") of the Issuer, and acting for the Issuer and in its name, hereby certifies as follows with regard to the Bonds and use of the proceeds thereof, all capitalized terms used herein and not otherwise defined herein to have the same meanings set forth in the Bond Ordinance duly enacted by the Issuer on March 20, 2008 as supplemented by a Supplemental Resolution duly adopted by the Issuer o May 16, 2008 (collectively, the "Ordinance"):

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or any predecessor thereto (collectively, the "Code"). We are officers of the Issuer duly charged with the responsibility of issuing the Bonds. We are familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer.

2. This certificate may be relied upon as the certificate of the Issuer.

3. The Issuer has not been notified by the Internal Revenue Service of any listing or proposed listing of it as an issuer that may not certify its obligations or the certification of which may not be relied upon by holders of obligations of the Issuer or that there is any disqualification of the Issuer by the Internal Revenue Service because a certification made by the Issuer contains a material misrepresentation.

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on May 16, 2008, the date on which the Bonds are to be physically delivered in exchange for more than a de minimus amount of the principal of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. In the Ordinance pursuant to which the Bonds are issued, the Issuer has covenanted to not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause the Bonds to be "arbitrage bonds" within

the meaning of Section 148 of the Code. The Issuer has, therefore, covenanted to not intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as otherwise allowed under Section 148 of the Code. The Issuer, in the Ordinance, has further covenanted that it will take all actions that may be required of it so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

6. The Bonds were sold on May 16, 2008, to The Huntington National Bank, Elkins, West Virginia (the "Purchaser"), for a purchase price of $600,000, being the par value thereof, there being no interest accrued thereon.

7. The principal of the Bonds in the amount of $600,000 will be paid to the Issuer on the Closing Date, for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project") and (ii) paying costs of issuance and related costs thereof. None of such monies will be deposited in a reserve or replacement fund, and all of such monies are necessary for such purpose.

8. All proceeds from the sale of the Bonds, together with any investment earnings thereon, if any, will be expended for payment of such costs of the Project on or before May 5, 2009.

9. Sources and uses of the proceeds of the Bonds are as follows:

SOURCES	
Gross Proceeds of the Bonds	$ 600,000
Issuer's Contribution	31,200
Total Sources	$ 631,200
USES	
Design and Preliminary Construction Costs	$ 623,200
Costs of Issuance	8,000
Total Uses	$ 631,200

The costs of paying the costs of the Project and the costs of issuance of the Bonds is estimated to be at least equal to the gross proceeds of the Bonds. Except for the proceeds of the Bonds, no other funds of the Issuer will be available to meet such costs,

which would constitute "replacement proceeds" within the meaning of Treas. Reg. § 1.148-1(c), inasmuch as (i) the Issuer does not reasonably expect that the term of the Bonds is longer than is reasonably necessary for the governmental purposes of the Issuer, (ii) the weighted average maturity of the Bonds does not exceed 120% of the average expected economic life of the betterments and improvements for the System, and (iii) there are no amounts that have a sufficiently direct nexus to the Bonds or to the governmental purpose of the Bonds to conclude that the amounts would have been used for that governmental purpose if the proceeds of the Bonds were not used or to be used for that governmental purpose.

10. Pursuant to Article IV of the Bond Ordinance, the following special funds have been created or continued:

(1) Renewal and Replacement Fund (established by Prior Ordinance);

(2) Series 2008 A Bonds Sinking Fund;

(3) Series 2008 A Bonds Reserve Account; and

(4) Series 2008 A Bonds Construction Fund.

11. Pursuant to Article IV of the Bond Ordinance, the proceeds of the Bonds will be deposited in the Series 2008 A Bonds Construction Fund and applied solely to payment of the Project, including costs of issuance of the Bonds and related costs. The Issuer reasonably expects that (i) it will incur a binding obligation to a third party to expend at least 5% of the net sale proceeds of the Bonds within 6 months following the date of issuance of the Bonds, (ii) completion of the betterments and improvements will proceed with due diligence, and (iii) it will expend at least 85% of the net sales proceeds for such costs within 3 years of the date of issuance of the Bonds.

Amounts in the Series 2008 A Bonds Construction Fund, if invested, will be invested without yield limitation for a period necessary to pay operating and other expenses of the System, not to exceed 3 years, except as otherwise set forth herein. All of such monies are necessary for such purpose.

Except for "preliminary expenditures" as defined in Treas. Reg. §1.150-2(f)(2), none of the proceeds of the Bonds will be used to reimburse the Issuer for costs of operating and other expenses of the System previously incurred and paid by the Issuer with its own or other funds.

12. Monies held in the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account will be used solely to pay the principal of and interest on the Bonds and will not be available to meet costs of operating and other expenses of the System.

13. Except for the Series 2008 A Bonds Sinking Fund and the Series 2008 A Bonds Reserve Account , there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay the principal and interest on the Bonds, or which are pledged as collateral for the Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Bonds if the Issuer encounters financial difficulties. None of the monies received from the Bonds will be deposited in any reserve or replacement fund.

14. Except for a reasonable temporary period until such proceeds are needed for the purpose for which such Bonds were issued or as otherwise allowed, no portion of the proceeds of the Bonds will be used, directly or indirectly, to acquire higher yielding investments, or to replace funds which were used, directly or indirectly, to acquire higher yielding investments, all within the meaning of Section 148 of the Code.

15. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of its Bonds to the Purchaser.

16. All proceeds of the Bonds will be expended on payment of such costs of the Project and costs of issuance within 12 months from the date of issuance thereof.

17. The amount designated as cost of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

18. All property financed with the proceeds of the Bonds will be held for federal income tax purposes by (or on behalf of) a qualified governmental unit.

19. No more than 10% of the 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. Less than 5% of the proceeds of the Bonds have been or will be used to make or finance loans to any person who is not a governmental unit. The covenants of the Issuer set forth above shall not, in any way, limit or restrict the ability of the Issuer to pay the costs of design and other preliminary costs of the Project, specifically including, but not limited to, engineering fees, from the proceeds of the Bonds.

20. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

21. The Issuer shall use the Bonds proceeds solely for such authorized costs of Project and costs of issuance and the System is and will be operated solely for a public purpose as a local governmental activity of the Issuer.

22. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from treatment afforded by Section 103(a) of the

Code by reason of classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions and refrain from taking such actions as shall be necessary to comply with the Code in order to ensure the interest on the Bonds is excludable from gross income for federal income tax purposes.

23. The Bonds are not and will not be, in whole or in part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

24. The Issuer has retained the right to amend or supplement its authorizing documents if such amendment or supplement is necessary to preserve the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

25. The Issuer shall comply with the yield restriction on the proceeds of the Bonds as set forth in the Code.

26. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with any of the Bonds and (c) will be paid out of substantially the same source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as any of the Bonds.

27. The transactions contemplated herein do not represent an exploitation of the difference between taxable and tax-exempt interest rates and the execution and delivery of the Bonds is not occurring sooner than otherwise necessary, nor are the Bonds in principal amounts greater than otherwise necessary or to be outstanding longer than otherwise necessary.

28. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds.

29. The Issuer shall file Form 8038-G in a timely fashion with the Internal Revenue Service.

30. On the basis of the foregoing, it is not expected that the proceeds of any of the Bonds will be used in a manner that would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

31. 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.

32. Steptoe & Johnson PLLC is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bonds.

33. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

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WITNESS my signature, dated as of the day and year first written above.

THE CITY OF ELKINS

Judith A. Guye
Mayor

Shirley J. Grazioni
Clerk

04.28.08
255620.00016

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 2008 A
(The Huntington National Bank)

CERTIFICATE OF REGISTRAR

The Huntington National Bank, Elkins, West Virginia (the "Bank"), as Registrar for the above-captioned Bonds (the "Bonds"), hereby certifies this 16th day of May, 2008 as follows, all capitalized terms used herein to have the same meanings set forth in the Bonds Ordinance of The City of Elkins (the "Issuer") enacted March 20, 2008, as supplemented by a Supplemental Resolution adopted May 15, 2008, (collectively, the "Ordinance"):

1. The Bank is a state banking corporation duly organized, validly existing, and in good standing under the laws of the State of West Virginia and may lawfully conduct business in West Virginia, and is lawfully empowered, pursuant to such laws, to accept the duties and obligations contemplated and as provided under the Ordinance and to serve in the capacity of Registrar under the Ordinance.

2. The Bank has duly authorized, by all necessary action, the authentication of the Bonds and the execution and delivery of this Certificate and the acceptance of all duties of Registrar under the Ordinance, and any and all other documents and agreements as may be required to be executed, delivered and received by the Bank in order to carry out, give effect to, and consummate the transactions contemplated thereby.

3. The person indicated in paragraph 4 below was at the time of the authentication of the Bonds, and is now, a duly elected, qualified and acting incumbent in his or her office; and, pursuant to authorization from the Board of Directors of the Bank, such person, in his or her official capacity, was and is authorized to authenticate the Bonds for and on behalf of the Bank.

4. Appearing opposite the name and title of the ~~person indicated~~ below is a true and correct specimen of his or her signature.

Name	Title	Signature
Randall Underwood	Vice President	

5. The Bonds have been duly authenticated, registered and delivered to the Purchaser, and the first advance of principal of the Bonds have been deposited as required by the Ordinance.

IN WITNESS WHEREOF, The Huntington National Bank, has caused this Certificate to be executed by its duly authorized officer, as of the day and year first written above.

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

03.17.08
255620.00016

THE CITY OF ELKINS

Sewer Revenue Bonds Series 2008 A
(The Huntington National Bank)

CERTIFICATE OF PURCHASER

The Huntington National Bank, Elkins, West Virginia (the "Purchaser"), as original purchaser from The City of Elkins (the "Issuer") of the above-captioned Bonds (the "Bonds"), hereby certifies this16th day of May, 2008, that:

1. We are purchasing the Bonds for our own portfolio and none of the Bonds have been the subject of an initial offering to the public. We do not intend to divide the Bonds purchased by us nor to resell or otherwise dispose of all or any part of the Bonds purchased by us, except as permitted by law on a basis of full disclosure to any subsequent holder of the Bonds and subject to applicable securities laws and regulations thereunder.

2. The weighted average maturity of the Bonds is 6.48 years.

3. The interest rate on the Bonds is at the rate of 5.25% per annum.

4. This certificate may be relied upon by the Issuer with respect to its Certificate as to Arbitrage relating to the Bonds, and by Steptoe & Johnson PLLC in rendering their tax opinion with respect to the Bonds.

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IN WITNESS WHEREOF, The Huntington National Bank, has caused this Certificate to be executed by its duly authorized officer, as of the day and year first written above.

The Huntington National Bank

By:_____
Its: Vice President

04.28.08
255620.00016

PART I.

THE CHARTER.

Editor's note.--The city Charter herein set out is Acts 1901, Chapter 151, as amended by the state legislature and by Home Rule Amendment pursuant to law as indicated by the historical citation following affected sections. A frontal analysis has been added for the convenience of the user. Some section catchlines have been altered and some material has been inserted in brackets for the purpose of clarification, no portion of which should be regarded as official. A uniform system of capitalization has been used and numbers have been spelled out rather than set out in arabic numerals. Editor's notes have been added to certain sections where the section is no longer accurate.

The legislature, in its 1969 revision and consolidation of chapters 8 and 8A of the Code of West Virginia into a new chapter 8, recognized, in section 8-1-6, "that when the provisions of existing special legislative charters are compared with and are considered in the light of the provisions of this chapter [i.e., the new chapter 8], there are five basic possibilities as to the relationship between such charter provisions and the provisions of this chapter, namely: (1) As to any particular charter provisions, such charter provisions may be inconsistent or in conflict with the pertinent provisions of this chapter; (2) although relating to the same subject matter and although not inconsistent or in conflict with any provisions of this chapter, certain charter provisions may be sufficiently different from pertinent provisions of this chapter as to indicate, as a matter of practical construction, that either the charter provisions or the provisions of this chapter, but not both, should be applicable; (3) although varying in certain respects, certain charter provisions may be similar to and in essential harmony with corresponding provisions of this chapter; (4) as to any particular charter provisions, there may be no counterpart of such provisions in this chapter; and (5) as to any provisions of this chapter, there may be no counterpart charter provisions."

Section 8-1-6, therefore, sets forth certain rules to be applied, in addition to the usual and ordinary

rules of statutory construction, with respect to construction and applicability of legislative charters, and it is suggested that users of this city Code refer to W. Va. Code, § 8-1-6, in determining the present construction and applicability of any portion of the Elkins Charter to any given situation.

§ 1. Corporate name and powers.
§ 2. Corporate limits.
§ 3. Wards.
§ 4. Elective municipal authorities.
§ 5. Council to exercise corporate powers.
§ 6. Qualification of mayor and councilman.
§ 7. Appointive officers and their qualifications.
§ 8. Election of mayor and other officers.
§ 9. Election of councilmen; vacancies.
§ 10. Qualifications and registration of voters.
§ 11. Elections; mode of voting; law governing.
§ 12. Determination of ties.
§ 13. Determination of contested elections.
§ 14. Vacancies.
§ 15. Council to have power to provide for additional officers and to set forth the power, duties, bonds, compensation, etc., of all officers; certain officers set forth.
§ 16. To whom official bonds made payable and proceedings thereon.
§ 17. Oaths of officers.
§ 18. When officers' duties begin.
§ 19. Procedure when officer-elect is ineligible or fails to qualify.
§ 20. Executive and judicial powers of mayor.
§ 21. City clerk to keep records, etc., and act as mayor in his absence.
§ 22. Quorum.
§ 23. Powers and duties and books required to be kept by city clerk.
§ 24. Minutes of previous meeting to be read; roll call of council.
§ 25. Mayor to vote only in case of a tie.
§ 26. Regular and special meetings and compulsory attendance thereto.
§ 27. City Collector and treasurer to keep all city moneys; how paid out.
§ 28. General corporate powers of council.
§ 28-(a). Authority to erect community building.
§ 29. Mayor's docket and what shall be contained therein; record of cases.
§ 30. Annual estimate of expenses and levy of taxes; statement of receipts and expenditures to be published annually.
§ 31. City assessor--Powers and duties generally.
§ 32. Same--Assessment books.
§ 33. Lien for taxes, fines, etc., and enforcement thereof.
§ 34. Duties, bond, etc., of city collector and treasurer.
§ 35. License ordinances and payment of tax thereon.
§ 36. Provisions of law applicable to licenses and expiration date of certain licenses.

§ 37. Condemnation of real estate for public use.
§ 38. Charter of South Elkins abolished.
§ 39. Ordinances, etc., not inconsistent and bonds, etc., remain in effect.
§ 40. City to take over corporate assets and assume obligations of town of South Elkins.
§ 41. Duties of council as to first election, etc.
§ 42. Former rights, powers, etc., of city undisturbed.
§ 43. Inconsistent ordinances and acts repealed.

Sec. 1. Corporate name and powers.

The inhabitants of so much of the county of Randolph as is within the bounds prescribed by section two of this act [this Charter], and their successors, shall be and remain and they are hereby made a body politic and corporate by the name of "The City of Elkins," and as such shall have perpetual succession and a common seal; and by that name may sue and be sued, plead and be impleaded, purchase, lease and hold real estate, and personal property necessary for the purpose of said corporation. (1901, ch. 151, § 1.)

Sec. 2. Corporate limits.

The corporate limits of said city shall hereafter be as follows: Beginning at the southern abutment of Bridge Number two of the Western Maryland Railway, across the Tygarts Valley River on its Huttonsville branch, being the bridge of said railway, situated about one thousand feet south of the junction of the Belington extension and Huttonsville branch of said railway, and running thence down said Tygarts Valley River on the east bank thereof to a stone the southwest corner of the Davis and Elkins College property; thence with six lines thereof S. 60 E. 478.5 feet to a white oak; N. 47.30 E. 316.8 feet to a stone; N. 48 E. 268.6 feet to a white oak; N. 59 E. 255.5 feet to a stone; N. 21.30 E. 115.5 feet to a stone; N. 68 E. 323 feet to a stone in the west lines of the Beverly and Fairmont Pike; thence with the western line of said pike in a northerly direction 489 feet to a stake; thence N. 62.15 E. 582 feet to a small oak tree; thence N. 38.55 E. 1405 feet to a small oak; thence N. 19.15 E. 957 feet to the Woolwine Run; thence S. 58 E. 1385 feet to a post in the line between Woolwine and Taylor 40 Feet southeast of Judson Goddin's corner; thence N. 17 E. 900 feet to a stone, corner to Wees, Woolwine and Taylor; thence N. 28 W. 2562 feet to the southeastern corner of the reservoir lot on the top of "Wees Hill"; thence with the back line of said reservoir lot to the northern corner thereof; the same being an oak; thence by a straight line to a point where the Buffalo and Leading Creek Pike crosses Cravens Run; thence by a straight line to the nearest corner of Maplewood Cemetery; thence with the line of said cemetery on the northern boundary thereof to the northwestern corner of the new addition to said cemetery; thence by a straight line due west to a stake in the elongation of Isaac Scott's eastern line; thence with said line S. 13.45 W. to a large chestnut, a corner of said Scott's land; thence with another line of said Scott's land S. 24.30 W. 1333.7 feet to the western line of Harrison Avenue; thence with the western line of said avenue S. 77 E. 201.8 feet to a stake; thence S. 25 W. 1024.5 feet to

a stake; thence S. 65 E. 166 feet to the western line of Robert E. Lee Avenue; thence with western line of said avenue; S. 25 W. 690 feet to a stake standing N. 65 W. 30 feet from a stone monument; thence S. 14.40 W. 940 feet to the river; thence with a straight line to the beginning. (1901, ch. 151, § 2; 1911, ch. 81; 1915, Muni. Chtr., ch. 16; 1921, Muni. Chtr., ch. 8.)

Editor's note.--The corporate limits description set out in this section is no longer valid as there have been subsequent additions to the city by annexations as provided for by state law. Copies of such annexations are on file in the city clerk's office.

Sec. 3. Wards.

The territory of said city shall be divided into wards as follows:

First ward. Beginning at the beginning point of the corporate boundary, at Bridge Number two, and running thence down the Tygarts Valley River, with the meanders thereof, to the point where said river crosses the western boundary of said city and with said western boundary to the place of beginning.

Second ward. Beginning at the point where the second corporate boundary line crosses the Beverly and Fairmont Pike, near the residence of W. H. Head and running thence with said Beverly and Fairmont Pike to the point where it intersects the Buffalo and Leading Creek Pike; thence with said last mentioned pike to the point where it crosses Cravens Run on the corporate boundary and shall include all the territory lying between said two pikes and the eastern boundary of the city.

Third ward. Beginning at the point where the boundary of the First Ward crosses the West Virginia Central and Pittsburgh Railway, in the Tygarts Valley River, at Bridge Number one, near the intersection of Railroad Avenue and First Street, and running thence down said river with the meanders thereof to the point where the said river crosses the northern boundary of the city, thence with said northern boundary, in a northern direction to the point where said boundary line crosses said railroad, near Maplewood Cemetery, thence with said railroad to the place of beginning.

Fourth ward. Beginning on the West Virginia Central and Pittsburgh Railway at the junction of Railroad Avenue and Second Street and running thence with Second Street to John Street; thence with John Street to Randolph Avenue, thence with Randolph Avenue to the junction of said avenue with Buffalo Street (a point in the boundary of the second ward) and shall include all the territory lying west and south of the streets just named which is not embraced in the First and Second Wards as above bounded.

Fifth ward. Shall include all the territory within the corporate boundary lying north of the fourth ward, between the Second and Third Wards as above bounded.

The number and boundary of the wards of said city may be changed at any time by the council thereof, but the number of wards shall not be reduced below three or increased above seven in number and shall be made as nearly equal in population as practical; provided, however, that no change in number or boundary of said wards shall be made nearer than sixty days before any general or special election to be held in said city; and provided, further, that no such change shall be made until public notice is given for at least thirty days, such notice to be posted at the front door of the mayor's office and at five or more public places in said city at least one of which notices shall be posted in each ward. (1901, ch. 151, § 3.)

Editor's note.--The ward descriptions set out in this section are no longer valid because of annexations to the city. Present ward boundary descriptions are on file in the city clerk's office.

Sec. 4. Elective municipal authorities.

The municipal authorities of said city shall consist of a mayor, to be elected by the voters of the whole city, and two councilmen from each ward, to be elected by the voters of such wards, (ten councilmen as provided by this Charter but the number thereof to be increased or diminished if the number of wards be increased or diminished), who together shall form a common council and who shall receive such compensation as the council shall from time to time determine, and which shall not be increased or diminished during their term of office. (1901, ch. 151, § 4.)

For related provisions of general law, see W. Va. Code, § 8-5-7, subsecs. (a) and (b).

Sec. 5. Council to exercise corporate powers.

All the corporate powers of said corporation shall be exercised by said council or under their authority, except when otherwise provided. (1901, ch. 151, § 5.)

Sec. 6. Qualification of mayor and councilmen.

The mayor and councilmen must severally at the time of their election, be assessed with property, real or personal, or both in the aggregate, of the value of at least two hundred dollars and have paid taxes for the preceding year on property situated within the corporate limits of said city of an assessed value of

at least two hundred dollars, and at the time of their election be entitled to vote in said city for members of the common council thereof. (1901, ch. 151, § 6.)

Editor's note.--The provisions of this section have been declared unconstitutional. State ex rel City of Follansbee, 233 SE2d 419 (1977).

For related provisions of general law, providing, inter alia, that mayors and councilmen of municipalities must be assessed with only $100 worth of property, with exceptions thereto for honorably discharged veterans of the armed forces of the U.S. for two years after discharge, see W. Va. Code, § 8-5-7, subsec. (c).

Sec. 7. Appointive officers and their qualifications.

There shall be a chief of police, city attorney, superintendent of streets, commissioner of waterworks, city assessor, city collector and treasurer, and city clerk, who at the time of their election or appointment shall be entitled to vote for members of the common council. These several offices or any two or more of them may be held by the same person, except that the offices of city clerk and city attorney shall be deemed incompatible with any other city office. These several offices shall be filled by appointment by the common council and to be held by the appointee during the pleasure of the council, and until his successor shall have been appointed and qualified; provided, however, that the common council by ordinance may provide for the election of any of said officers and prescribe their term of office at not less than one, nor more than two years. (1901, ch. 151, § 7.)

Editor's note.--Inasmuch as county assessors now perform the duties heretofore performed by municipal assessors, a city assessor is no longer appointed.

Sec. 8. Election of mayor and other officers.

On the first Tuesday in March, one thousand nine hundred and eleven, and every two years thereafter, on the first Tuesday in March, there shall be elected by the qualified voters of said city, a mayor and such other officers as may be prescribed by ordinance as provided for in the preceding section. The mayor shall hold his office for the term of two years, commencing on the first day of April after his election until his successor shall be elected and qualified.

Sec. 9. Election of councilmen; vacancies.

On the same day mentioned in the preceding section, one member of the common council shall be elected in each ward of the city, who shall reside in

the ward from which they were [he is] elected, and shall hold their [his] office for the term of two years, or until their successors are [his successor is] elected and qualified. On the first Tuesday in March, 1912, one member of the common council shall be elected in each ward of the said city, who shall reside in the ward from which they are [he is] elected, and shall hold their [his] office for the period of three years from the first day of April next succeeding their [his] election, or until their successors are [his successor is] elected and qualified: on the first Tuesday in March, 1913, and on the same day of every second year thereafter, one member of [the common] council shall be elected in each ward, whose term of office shall begin on the first day of April next succeeding his election, and continue for the term of four years, and until his successor is elected and qualified; but if any member of the common council remove from the ward in which he was elected, his office shall thereby become vacant, and the council, shall fill such vacancy by appointment, until the next general election, of some qualified person residing in the ward. Each ward shall constitute an election precinct, and the council of the city, in office at the time of the passage of this act [this Charter], shall establish a voting place in each ward, at which the first election above provided for shall be held, and unless such new places be established, the election shall be held at the several places now established therefor. No voter shall be allowed to vote at any city election, excepting in the ward in which he resides. (1901, ch. 151, § 9; 1911, ch. 81.)

For general law relating to municipal voting precincts and duty of governing bodies to establish them so as to coincide with county precincts, see W. Va. Code, § 3-1-6. As to municipal precinct registration records, see W. Va. Code, § 3-1-27.

Sec. 10. Qualifications and registration of voters.

Editor's note.--The text of this section (being Acts 1901, ch. 151, § 10; 1911, ch. 81; 1915, Muni. Chtr., ch. 16; 1921, Muni. Chtr., ch. 8) is omitted as obsolete in all respects.

For general law as to qualifications and registration of voters, see W. Va. Code, ch. 3, arts. 1 and 2; see also, § 8-5-13.

Sec. 11. Elections; mode of voting; law governing.

The mode of voting shall be by ballot, but the voter shall be left free to vote an open, sealed or secret ballot, as he may elect. The elections in said city shall be held and conducted and the result thereof certified, returned and finally determined under the laws in force in this state, relating to general elections, as they exist at the time any such election is being held, except that the persons conducting said elections shall on the day after the election is held deliver the ballots, tally sheets and poll books to the city clerk, and thereafter

the common council of said city shall meet on the sixth day succeeding said election and canvass the returns of said election, and declare the result thereof, and in all respects comply with the requirements of the statutes relating to general elections as they are in force at the time of holding said election. The corporate authorities of said city shall perform all the duties in relation to such election required by general law of county courts [county commissions] and officers in the general election laws of this state, and the provisions of chapter 3 of the Code of West Virginia, in effect at the date of such election, concerning elections by the people, shall govern such elections and be applicable thereto, and the penalties therein prescribed for offenses relating to elections shall be enforced against the offenders at such corporate election; and the said general election laws shall have the same force and effect as if they were specially enacted for corporate elections and were by this act [this Charter] specially reenacted in extenso, except as modified in this amended Charter to the city of Elkins. (1901, ch. 151, § 11; 1911, ch. 81.)

For general law as to applicability of state election laws to municipal elections, see W. Va. Code, § 8-5-6. As to the canvassing of municipal elections, see W. Va. Code, § 8-5-17.

Sec. 12. Determination of ties.

Whenever two or more persons shall receive an equal number of votes for mayor, councilman or other city office, such tie shall be decided by the council in being at the time the election was held. (1901, ch. 151, § 12.)

For general law as to determination of tie votes in municipal elections, see W. Va. Code, § 8-5-15.

Sec. 13. Determination of contested elections.

All contested elections shall be heard and determined by the common council and the contest shall be made and conducted in the same manner as provided for in contests for county and district officers, and the common council by their proceedings in such cases shall comply as nearly as practicable in conformity with like proceedings of the county courts [county commissions] in such cases. (1901, ch. 151, § 13.)

For general law as to determination of contested municipal elections, see W. Va. Code, § 8-5-17.

Sec. 14. Vacancies.

Whenever a vacancy from any cause shall occur in any office the council shall by a majority vote of those present fill such vacancy. (1901, ch. 151, § 14.)

For general law as to filling vacancies in elective municipal offices, see W. Va. Code, § 8-5-10.

Sec. 15. Council to have power to provide for additional officers and to set forth the power, duties, bonds, compensation, etc., of all officers; certain officers set forth.

(a) The council shall also have authority to provide by ordinance for the appointment of such other officers as shall be necessary and proper to carry into full force and authority the power, capacity, jurisdiction and duties of said city which is [are] or shall be vested therein, or in the council, or in the mayor or any other officer or body of officers thereof, and to grant to the officers so appointed the power necessary or proper for the purposes above mentioned. The council by ordinance shall define the duties of all officers so appointed or elected as aforesaid, and allow them reasonable compensation which shall be by monthly or quarterly salaries and not otherwise, except as to the collection of taxes, and fees to the mayor and chief of police in criminal convictions wherein the fees are recovered from the defendant, which compensation shall not be increased or diminished during their term of office; and shall require and take from all of them whose duty it shall be to receive its funds, assets or property, or have charge of the same, such bonds, obligations or other writings as they shall deem necessary or proper to insure the faithful performance of their several duties. All officers whether appointed or elected may be removed from office for malfeasance, nonfeasance or misfeasance by the council; but provided always that any appointed officer who holds his office at the pleasure of the council may be removed from his office at any time without notice.

For 1974 amendment to state constitution providing, in pertinent part, that no "judge of a municipal, police or mayor's court or any officer thereof shall be compensated for his services on a fee base or receive for his own use for his services any pecuniary compensation, reward or benefit other than the salary prescribed therefor," see Const., art. 8, § 11.

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(b) Powers, duties, etc., of chief of police. The chief of police shall have all powers, rights and privileges within the corporate limits of said city in regard to the arrests of persons, the collection of claims, the execution and return of process, that can be legally exercised by a constable of a district within this state; and may without having any warrant or other process therefor arrest any person who commits any offense against the laws of this state or infraction of the ordinances of said city, in his presence. He shall be ex officio the keeper of the jail and have charge of the city prisoners confined therein and may confine any persons arrested by him in the city jail until such time as the charges against such person can be inquired into by the mayor. Any person fined by the mayor for infraction of any of the ordinances of the city may pay such fine to either the mayor or chief of police; and the said chief of police and his sureties shall be liable to all fines, penalties and forfeitures that a constable of a district is liable to for any failure or dereliction in his said office to be recovered in the same manner and in the same courts that the said fines, penalties and forfeitures are now recovered against a district constable.

(c) Powers, duties, etc., of collector and treasurer. It shall be the duty of the collector and treasurer to collect city taxes, licenses, levies, assessments, and other such city claims as are placed in his hands for collection by the council, and [he] may distrain and sell therefor in like manner as a sheriff may distrain and sell for state taxes, and he shall in all other respects have the same powers as the sheriff to enforce the payment and collection thereof. (1901, ch. 151, § 15.)

Sec. 16. To whom official bonds made payable and proceedings thereon.

All bonds, obligations or other writings taken in pursuance of any provision of this act, [this Charter], or under the provisions of any ordinance of said city, shall be made payable to "The City of Elkins," and the obligors therein and their heirs, executors, administrators and assigns, bound thereby shall be subject to the same proceedings on such bonds, obligations or writings for enforcing the conditions of the terms thereof, by motion or otherwise before any court of record or justice of the peace having jurisdiction thereof, held or acting in, or for said Randolph county, or any district thereof or elsewhere, that the sheriff or collector of said county and his sureties are or shall be subject to on his bond taken for the enforcement of his duties in the payment of the county levies. (1901, ch. 151, § 16.)

For constitutional provision abolishing office of justice of the peace as of January 1, 1977, see W. Va. Const., art. 8, § 15.

Sec. 17. Oaths of officers.

The mayor and council and all other officers provided for in this act [this Charter] shall each, before entering upon the duties of their office, and within thirty days after their election or appointment, take the oath or affirmation prescribed by law for all officers in this state, and make oath or affirmation that they will truly, faithfully and impartially, to the best of their ability, discharge the duties of their respective offices so long as they continue therein. Said oath or affirmation may be taken before any person authorized to administer oaths under the laws in force at the time the same is taken, or before the mayor or city clerk of said city, but in any event a copy of said oath of said officers shall be filed with the city clerk. (1901, ch. 151, § 17.)

For general law as to oath of office of municipal officers, and requirement for filing certified copy in office of the county clerk, see W. Va. Code, § 8-5-5.

Sec. 18. When officers' duties begin.

The mayor and councilmen, and all other elected officers, shall enter upon the duties of their office on the first day of April next after their election, or as soon thereafter as they have qualified, and all appointed officers shall enter upon the duties of their offices as soon as they have qualified; and all officers shall remain in office until their successors are elected and qualified or until removed therefrom. (1901, ch. 151, § 18.)

Sec. 19. Procedure when officer-elect is ineligible or fails to qualify.

If any person elected to any office shall not be eligible thereto under the provisions of this act [this Charter] or shall fail to qualify as herein required, the council shall declare his said office vacant and proceed to fill the vacancy as required by this act. (1901, ch. 151, § 19.)

Sec. 20. Executive and judicial powers of mayor.

The mayor shall be the chief executive officer of the city, and shall take care that the orders, by-laws, ordinances, acts and resolutions of the council thereof are faithfully executed. He shall be ex officio a justice and conservator of the peace within the city, and shall within the same have, possess and exercise all the powers and perform all the duties vested by law in a justice of the peace, except [that] he shall have no jurisdiction in civil cases or causes of action arising out of the corporate limits of the city unless the defendant resides or is found therein and process therein served upon him. He shall have the same power to issue attachments in a civil suit as a justice of his county has, but in such cases he shall have no power to try the same, but such attachments shall be made returnable and heard before a justice of the peace of his county. Any warrant or other process issued by him may be executed at any place in

the county. He shall have control of the police of the city and may appoint special police officers whenever he deems it necessary, and may suspend any police officer until the next regular meeting of the council. And it shall be his duty especially to see that the peace and good order of the city are preserved, and that persons and property therein are protected, and to this end he may arrest, or cause the arrest and detention of, all violators of the laws of the state and the ordinances of the city, before issuing his warrant therefor if the offence is committed in his presence. He shall have power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof and in default of such payment he may commit the party in default to the jail of the county of Randolph or other place of imprisonment in such corporation, if there be one, until the fine or penalty and costs shall be paid; but the term of imprisonment in such cases shall not exceed thirty days. And in all cases when a person is sentenced to imprisonment or to the payment of a fine of ten dollars or more (and in no case shall a judgment for a fine be for less than ten dollars if the defendant, his agent or attorney object to a less fine being imposed), such person shall be allowed an appeal from such decision to the circuit court of the county of Randolph upon the execution of an appeal bond with security deemed sufficient by the mayor, in a penalty sufficient to cover said fine and costs before the mayor, and the costs in the circuit court in case said judgment be affirmed, with condition that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the circuit court on such appeal. If such appeal be taken the warrant of arrest (if any), a transcript of the judgment, the appeal bond and other papers in the case, shall be forthwith delivered by the mayor to the clerk of said court, and the court shall proceed to try the case as upon indictment or presentment, and render such judgment, including costs, as the law and the evidence may require. The mayor shall from time to time recommend to the council such measures as he may deem needful for the welfare of the city. The expense of maintaining any person committed to the jail of the county by him, except it be to answer an indictment, shall be paid by the city and taxed as costs against the defendant. The mayor before acting shall execute bond with good security in the penalty of not less than one thousand dollars, or in such additional penalty as the council may require, subject to the approval of the council, with the same conditions as required in bonds executed by [a] justice of the peace by chapter 50 of the said Code [of West Virginia]; and all the provisions of said chapters relating to money received by a justice shall apply to like moneys received by the mayor. (1901, ch. 151, § 20.)

For constitutional provisions that mayor's courts in incorporated cities shall have jurisdiction to enforce municipal ordinances, but that on and after January 1, 1977, any other jurisdiction theretofore exercised by such courts shall cease, see W. Va. Const., art. 8, § 11. As to abolition of office of justice of the peace as of January 1, 1977, see W. Va. Const., art. 8, § 15.

Sec. 21. City clerk to keep records, etc., and act as mayor in his absence.

The city clerk shall keep an accurate record of the proceedings of the council, and have charge of and preserve the records of the city, and in case of the absence from the city, or in case of the sickness or inability of the mayor to act, or during any vacancy in the office of mayor, he shall perform such duties of the mayor as pertain to him as chief executive of the city and be vested with all power necessary for the performance of such duties, but shall not be vested with any of the authority of the mayor, pertaining to civil suits. He shall be a conservator of the peace within the city. (1901, ch. 151, § 21.)

For constitutional provision divesting municipal mayor of jurisdiction over civil suits, see W. Va. Const., art. 8, § 11.

Sec. 22. Quorum.

The presence of a majority of the council shall be necessary to make a quorum for the transaction of business. (1901, ch. 151, § 22.)

For general law as to quorum at meetings of municipal governing bodies, see W. Va. Code, § 8-9-1.

Sec. 23. Powers and duties and books required to be kept by city clerk.

The council shall cause to be kept by the clerk in a well bound book to be called the "Minute Book," an accurate record of all its proceedings, ordinances, acts, orders and resolutions, and in another to be called "Ordinance Book," accurate copies of all general ordinances adopted by the council; both of which shall be accurately indexed and open to [the] inspection of anyone required to pay taxes in the city, or who may be otherwise interested therein. All oaths and bonds of officers in the town, and all papers of the council shall be endorsed, filed and securely kept by the clerk. The bond of officers shall be recorded in a well bound book to be called "Record of Bonds." The clerk shall perform such other duties as may by ordinance of the council be prescribed. The transcripts of ordinances, acts, orders and resolutions certified by the clerk under the seal of the city shall be deemed prima facie correct when sought to be used in any court or before any justice. (1901, ch. 151, § 23.)

For constitutional provisions abolishing office of justice of the peace as of January 1, 1977, see W. Va. Const., art. 8, § 15.

For general law as to records and minutes of municipal governing bodies, and duties of clerks and recorders with respect thereto, see W. Va. Code, §§ 8-9-3, 8-10-3.

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Sec. 24. Minutes of previous meeting to be read; roll call of council.

At each meeting of the council the proceedings of the last meeting shall be read and corrected if erroneous and signed by the presiding officer for the same being. Upon the call of any member the ayes and noes on any question shall be taken and recorded by the clerk in the minute book. The call of the members for such vote shall be made alphabetically. (1901, ch. 151, § 24.)

For corresponding provisions of general law, see W. Va. Code, § 8-9-3.

Sec. 25. Mayor to vote only in case of a tie.

The mayor shall have no vote upon any proceedings before the council except in the case of a tie. (1901, ch. 151, § 25.)

For general law as to authority of municipal mayor to cast tie-breaking vote "unless he has previously voted," see W. Va. Code, § 8-9-2.

Sec. 26. Regular and special meetings and compulsory attendance thereto.

The regular meeting of the council shall be held at such time and at such places in the city as they shall from time to time ordain and appoint; and it shall be lawful for the council by ordinance to vest in any officer of the city, or in any member or number of members of their own body, the authority to call special meetings and prescribe the modes in which notice of such special meetings shall be given. If a majority of the members of the council do not attend any regular or special meeting, those in attendance shall have authority to compel the attendance of absent members under such reasonable penalties as they may think proper to impose; all questions put to a vote, except such matters as are hereinafter provided for, shall be decided by a majority of the members present. (1901, ch. 151, § 26.)

For general law as to proceedings of municipal governing bodies, see W. Va. Code, §§ 8-9-1 through 8-9-3.

Sec. 27. City collector and treasurer to keep all city moneys; how paid out.

All moneys belonging to the city shall be paid over to the city collector and treasurer; and no money shall be paid out by him except as the same shall have been appropriated by the council and upon an order signed by the mayor and city clerk, and not otherwise, except [that] at the expiration of his term of office upon the order of the council, signed by the mayor and clerk, he shall pay over to his successor all the money remaining in his hands. (1901, ch. 151, § 27.)

Sec. 28. General corporate powers and duties of council.

Editor's note.--The subsection numbers in this section are supplied by the editors to facilitate reference thereto, and are not to be regarded as official. For state law as to general powers of municipalities, see W. Va. Code, § 8-12-1 et seq.

(1) The council of said city shall have the following general powers, and may provide by ordinance and resolution for the exercise and enforcement of the same, namely:

(2) To lay off, open, close, vacate and maintain public grounds, parks and public places, and name and re-name the same.

(3) To regulate the planting, trimming and preservation of shade trees by persons and corporations in streets, alleys, roads, public grounds and places, and to provide for the planting, removal, trimming and preservation of such trees and other ornamental shrubbery by the municipality.

(4) To declare as public nuisances any trees, shrubbery, etc., growing on private property within said city, the roots of which clog or choke any public sewer belonging to said city, or damage the streets or sidewalks of said city, and provide for the removal or destruction of said trees or shrubbery.

(5) To establish, maintain and regulate free public libraries and reading rooms, and to purchase books, papers, maps, and manuscripts therefor, and receive donations and bequests of money or property for the same, in trust or otherwise, and to provide for the rent and compensation for the use of any existing free public libraries established or managed by private corporations or associations organized for that purpose.

(6) To protect divine worship in or about the premises where held.

(7) To locate, lay off, close, open, alter, grade, straighten, widen, narrow, vacate, pave, repave, construct and keep in repair bridges, viaducts, undergrade crossings, roads, streets, alleys, sidewalks, crosswalks, drains and gutters, for the use of the public, or any of the citizens thereof, and to improve and light the same, and keep them clean and free from obstruction on or over them; provided, the municipality shall not be liable for or respond in damages for injury to persons or property caused by or from a defect or obstruction in or on the plat [plot] of ground between the gutter or curb of any street and the paved or plank sidewalk extending there along, or between any such sidewalks and the property lying next adjacent thereto, unless the municipality had actual notice of such defect or obstruction prior to the time of the injury complained of.

(8) To enter into a contract with any internal improvement company for the joint ownership of any bridge erected by the municipality and such improve-

such company, upon such terms as may be prescribed in the contract between them, but such bridge or bridges shall be in a public highway, and the interest of the company shall only be such proportionate part thereof as it may pay for, or that [which] may be named in the contract.

(9) To regulate the width of sidewalks and streets, and the width and care of public grounds or grass plots abutting thereon, and to order the sidewalks, footways, crosswalks, drains and gutters to be curbed and paved, or repaved and kept in good order, free and clean, and to provide for the removal of ice and snow therefrom and for sprinkling the same, by the owners or occupants of the real estate next adjacent thereto.

(10) To regulate the use of walks, highways and bridges and the rate of speed or travel thereon, and to prevent and punish for fast driving or riding thereon of any horse, bicycle, wheeled vehicle, wagon, steam or electric or traction engine, motor car or automobile; and to prevent injury to or waste on such streets, alleys, roads or highways from overloaded or improperly loaded vehicles.

(11) To regulate the making of division fences and party walls by the owners of adjoining and adjacent premises and lots, and to regulate or require drainage by the owner of such lots or other real estate by the proper drains, ditches and sewers, and to fill and cause to be filled any lot below the established elevation or grade.

For a case holding that the legislative grant to regulate division fences does not authorize the municipal council to declare a fence a nuisance unless and until it has, by a general ordinance, in fact declared the nature and character of the fences that may properly be built and maintained, see Donohoe v. Fredlock, 72 W. Va. 712, 79 SE 738 (1913).

(12) To regulate the erection and use of radio aerials and other radio equipment.

(13) To regulate or prohibit street carnivals, street fairs, or street parades, advertising exhibitions or other exhibitions thereon, or the exhibition of natural or artificial curiosities thereon.

(14) To regulate or prohibit the ringing of bells, blowing of steam whistles, sounding of motor car or automobile horns, or use of hand organs or other musical instruments of any annoying character or other music of itinerant performers in the streets, roads, parks or public places of the municipality; provided, however, that this regulation shall not apply to common carriers in the ordinary discharge of their duties.

(15) To license, regulate or prohibit auctioneering.

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

(17) To impose a license tax on persons keeping for hire taxis, carriages, hacks, buggies, wagons or for carrying for hire persons or baggage in such vehicles, and to regulate the charge for such services within the corporate limits of said city.

(18) To establish and regulate hack stands and stands for automobiles, coaches, cabs and omnibuses kept on the streets for hire.

(19) To regulate, assess and collect a license fee for the use of the municipality on anything or business for which a state license is required by chapter 32 of the Code, subject to the exemption as provided therein; and excepting herefrom the right to require licenses under subsections (s) and (t) of section 1 of chapter 32 of the Code.

Editor's note.--The statutory citations in subsection (19) are to Barne's Code, Annotated, 1923, which were carried over into the Official Code of West Virginia, 1931, as article 12, chapter 11 thereof. What was § 1 of ch. 32 of Barne's Code has since been repealed; and the whole of article 12, chapter 11 of the Official Code of 1931, relating to state license taxes, was repealed and reenacted so as to provide for state business franchise certificates instead; but see W. Va. Code, § 11-12-4 as to authority of municipalities to impose license taxes pursuant to W. Va. Code, § 8-13-4, up to the amount of the state license tax in effect on January 1, 1970, "with like effect as if this article [art. 12, ch. 11] had not been enacted."

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

(21) To regulate the sale of all food or drink products, milk, fresh meats, fish and vegetables, and provide for inspection of the same.

(22) To appoint market masters and invest them with power to make arrests for the violation of the municipal ordinances or regulations.

(23) To regulate and provide for the weighing of hay, coal and other articles for sale in the markets.

(24) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome, and to prevent and [or] regulate the distribution by canvassers, agents or other persons of sample packages of drugs, medicine, powders, paint, or other articles which may be dangerous or unwholesome for children.

For a case holding that, under the grant of power "To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome....," the common council may abate only that as a nuisance which is recognized as such per se or branded as such by lawful statute or ordinance, see Donohoe v. Fredlock, 72 W. Va. 712, 79 SE 736 (1913).

(25) To regulate or prohibit the keeping, handling and transportation of explosives and dangerous combustibles within the municipality.

(26) To regulate or prohibit the erection or maintenance, in what council deems an improper locality within the municipality, of any blacksmith shop, livery stable, cow house, cattle pen, poultry house, pigpen, privy, billboard, signboard, gas or other engine, or the use of walls and walks for signs, and to abate by summary proceedings whatever in the opinion of the council is a nuisance; provided, that nothing in this paragraph shall apply to common carriers in the construction, erection or maintenance of shops, engines, machinery, or structures upon their own property.

For a case holding that, under the legislative grant of power to the common council "to abate or cause to be abated anything which in the opinion of a majority of the whole council shall be a nuisance," the council may abate only that as a nuisance which is recognized as such per se or branded as such by lawful statute or ordinance, see Donohoe v. Fredlock, 72 W. Va. 712, 79 SE 736 (1913).

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

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

(29) To establish, regulate and maintain baths, bath houses, swimming pools, drinking fountains, water troughs and public toilet stations and free

public band concerts, and to regulate the time and place of bathing in pools, streams and public waters within the police jurisdiction of the municipal corporation.

(30) To prevent hogs, cattle, sheep, horses and other animals and fowls of all kinds from going at large in the municipality and to establish and maintain places for their detention, to make regulations respecting the keeping and sale of same, and to appoint a poundmaster and define his duties.

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

(32) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any book, picture or device or other thing containing obscene language or pictures, or making indecent representations.

(33) To restrain and punish vagrants, mendicants, beggars, tramps, common prostitutes and their associates, and drunken and disorderly persons within the municipality, and to provide for their arrest and manner of punishment.

(34) To establish a board of health and invest it with the necessary power to attain its object.

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

(36) To prohibit and punish by fine any person, firm or corporation knowingly bringing into the corporate limits persons who are paupers, or persons afflicted with contagious diseases, or to punish by fine, or by fine and imprisonment, any persons so bringing within the corporate limits such pauper or diseased person.

(37) To provide for the poor of the municipality, and to that end the municipality may contract with the county court [commission] of Randolph county for keeping such poor at the county poorhouse at a price and on such terms as may be agreed upon between the county court and such municipal authorities.

(38) To authorize the taking up and provide for the safekeeping and education, for such periods of time as may be deemed expedient, of all children who are destitute or are without proper parental or other care and who are growing up in mendicancy, ignorance, idleness or vice.

(39) To arrest, convict and punish any person for cruelty, unnecessarily or needlessly beating, torturing, mutilating, killing or overloading, overdriving or wilfully depriving of necessary sustenance, any horse or other domestic animals.

(40) To restrain fraudulent practices within the municipality.

(41) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called faro bank, table and chips used in playing such game; crap table or chips used in playing such game; or roulette or the wheel or chips used in playing such game; or keno table or table of like kind or device used in playing the same; or table of like kind under any denomination, whether the game or games be played with cards, dice or otherwise, or any person who shall be a partner, or concerned in interest in the keeping or exhibiting of such gaming table, faro bank table, or chips, roulette table or chips, crap table or chips, keno table or devices, or keeping or maintaining any gambling house or place, or betting or gambling for money or anything of value, and to destroy such gambling paraphernalia as may be found in use on any such premises.

(42) To restrain all felons and persons guilty of offense against this state or the United States and deliver them over to the authorities or court having jurisdiction of the offense whereof such person is accused.

(43) To apprehend and punish any person, who, without a state license therefor, is guilty of carrying about his person within the municipality any revolver or other pistol, dirk, bowie knife, slingshot, razor, billy, metallic or other false knuckles, or any other dangerous or deadly weapons of like kind and character, as provided by chapter 51 of the acts of the legislature of 1909 [W. Va. Code, § 61-7-1] and the punishment therefor, whether for the first or other offense, shall be that prescribed by said chapter for any such person guilty under the misdemeanor clause provided therein, but the place of confinement of such guilty person may be in the jail or lockup of the municipality, in lieu of the county jail; provided, that the mayor of the municipality or other person exercising the functions of his office, may, in his discretion, decline to inflict the punishment herein mentioned, and instead thereof may require or hold such guilty person to answer an indictment by the grand jury of Randolph county for the violation of such law; and it shall be the duty of the prosecuting attorney of said county, when requested by the mayor of the municipality, to appear and prosecute such offending person before such mayor; provided, further, that regularly appointed police officers of the municipality, whose services are rendered to and paid for by the municipality, shall not be required to give bond, or any bond provided by said chapter 51 of the acts of the legislature of 1909 [W. Va. Code, § 61-7-2].

(44) To provide in or near the corporate limits of the municipality a cemetery or other place for the burial of the dead, and to regulate interments therein, and to guard and police the same, and to provide for the cremation and incineration of dead human bodies when from the nature of the malady or pestilence from which death ensued, the municipal board of health may direct.

(45) To regulate the erection, construction, alteration and repair of dwelling houses, buildings and other structures within the municipality and to compel the numbering of the same by the owners or occupants thereof; provided, that the provisions of this paragraph shall not apply to common carriers in the erection, construction, alteration or repair of structures upon their own property.

(46) To regulate by license and otherwise, plumbers, electricians, sewer tappers and vault cleaners, except when such persons are employed by a common carrier upon its own property.

(47) To regulate the hanging of doors and construction of stairways, elevators and fire escapes in theatres, churches, school buildings, factories and other places where many persons are received at one time, and to require the construction of fire escapes in such buildings.

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

(49) To regulate the building of fire walls, fireplaces, chimneys, boilers, smokestacks and stovepipes.

(50) To take down and remove, or make safe and secure, any and all buildings hereafter erected and require the alteration and repair of any by 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.

(51) To regulate the height, construction and inspection of all new buildings hereafter erected, and the alteration and repair of any buildings now or hereafter erected in the municipality, and to require permits to be obtained of the municipality for such building and structures, and the repair and alteration thereof, and that plans and specifications thereof be submitted to the council or some person designated by it; provided, that the provisions of this paragraph shall not apply to buildings or structures located upon the property of common carriers.

(52) To regulate the limits 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 on any street.

(53) To provide for the prevention and extinguishment of fires, and for this purpose to organize, equip and govern fire companies, and to prescribe the powers and duties of such companies and department, and of the several officers thereof, and to impose on those who fail to obey any lawful command of the officers in charge of such company any penalty which the council is authorized to impose for the violation of an ordinance, and to give authority to such fire officer to direct the pulling down of any building or the destruction of any fence, wall, building or other thing if such officer deem it necessary to prevent the spreading of fire.

(54) To protect the persons and property within the corporate limits and to preserve the peace and good order therein, and for this purpose to appoint, when necessary, a police force and such other officers as may be deemed necessary.

(55) To prescribe the powers and define the duties of the officers appointed under corporate authority, fix their term of service and compensation, if not otherwise prescribed in this chapter [Charter], and to require and take from them bonds, when deemed necessary, payable to the State of West Virginia, or the City of Elkins, with such securities and in such penalties as may be prescribed, conditioned for the faithful discharge of their duties.

(56) To erect, authorize and prohibit the erection of power plants, heating plants, gasworks, electric light works or waterworks in the municipality for public service, and to erect, purchase, own or lease and maintain within or without the corporate limits of the municipality such gasworks, electric lights, power works, waterworks and reservoir to supply the municipality or its inhabitants, water, light, heat and power, and to prevent injury to the same or the pollution of the water or to impair the healthfulness thereof and may acquire land for said purposes by purchase, lease or condemnation.

(57) To grant, by ordinance or franchise, for periods not exceeding twenty-five years, the use of its streets, roads, alleys and public places, to lay pipes, conduits, manholes, drains, and other necessary fixtures and appliances, to be used for supplying the municipality and its inhabitants with steam or hot water, or both, for heat and power purposes, or both, or for illuminating purposes, and to grant by ordinance or franchise, for periods of not exceeding twenty-five years, the use of its streets, roads, alleys and public places for the construction of movable or rolling roads for the conveying or moving of passengers, freight and other property, and those in charge of the same, upon such terms and conditions as may be prescribed.

(58) To grant by ordinance or resolution permits for the temporary use of its streets, roads, alleys and public places for the construction of moving or rolling roads for the conveying or moving of passengers, freight, vehicles, animals or other property, upon such conditions as may be prescribed.

(59) To provide a revenue for the municipality and appropriate the same to its expense; and to cause to be assessed and collected in each year an

ad valorem tax, within the limits of the general tax laws of the state, on all property in the municipality subject to state and county taxes, as valued and returned for such taxation by the county assessor.

(60) To levy an annual capitation tax of not more than two dollars upon each male resident of the municipality who has attained the age of twenty-one years, and from which persons afflicted with bodily injury and those having attained the age of fifty years shall be excepted.

Editor's note.--Sec. 2, art. 10 of the constitution of West Virginia, authorizing a capitation tax as provided in subsections (60) and (61), has been repealed.

(61) To provide for the collection of said capitation at the time, and in the manner as the regular capitation tax is collected, which may be done either through the county assessor or by any other person designated by the municipality; but if the county assessor or other person than city assessor, he shall give such bond as may be required by the council before making such collection.

(62) To issue and sell bonds in the manner provided by general laws governing the same, and in addition to other taxes, to levy for the maintenance of a sinking fund where such bonds have been issued and are unpaid, and to control such sinking fund and to make temporary loans thereof, or to make temporary investments thereof, or of any specific fund for the time such fund cannot be advantageously used for the purpose for which it was levied and collected.

(63) To provide for the rent and compensation for the use of any existing free public hospital, established or managed by a private association or corporation organized for that purpose.

(64) To provide for the removal and abatement of nuisances; and to carry out and enforce sanitary regulations.

(65) To compel the attendance at public meetings of the members of the council, or other body exercising their respective functions.

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

(67) Subject to the approval of the public service commission, the council may regulate the running of steam and electric cars over and across any street or alley, and when deemed proper by the council, it may by resolution require any railroad company or street car company to provide at its own expense a suitable watchman at any crossing of any street or alley during such hours as may be designated by the council or otherwise regulate such crossings in order to protect persons walking or driving over them.

(68) Whenever in the opinion and judgment of the council of the municipality it is necessary, it shall have power to construct such sewers as in its opinion and judgment are needful to the comfort, health, safety and welfare of the inhabitants of said municipality or of the public, and may construct such sewers at such places within or without the corporate limits, and in such manner as in the opinion and judgment of said council may be proper; but so far as practicable, shall construct such sewers under the streets, alleys or roads of the city; and whenever in the opinion and judgment of said council any street or alley of said city should be paved or repaired with brick, or other suitable substance for paving purposes, or surfaced and repaired with amiesite or other suitable material, the said council may cause the same to be done in such manner as in the opinion and judgment of the council is most suitable for the purpose, and whenever in the opinion and judgment of the council any sidewalks or footwalks of stone, brick, cement or other suitable substances, are necessary, or beneficial, and for the best interest of the inhabitants of said city, the council may order the same to be constructed in such manner and of such material as in the opinion and judgment of the council are most suitable for the purpose, and for the purpose of paying the expenses and cost of any such sewer, paving, sidewalks or footwalks, the said council may levy a special assessment for the cost thereof against the real estate benefited thereby, and which bounds or abuts thereon, and may cause such special assessment with interest thereon after thirty days from the levying of such assessment, at the rate of six per cent per annum, to be collected as city taxes are collected against real estate in said city, as provided in chapter 151 of the acts of 1901 [this Charter], and as provided for the collection of state taxes assessed against real estate in said city; but in the case of any sewer constructed under and along any street, alley or road, or in case of any pavement constructed upon any street or alley, the bounding or abutting real estate on each side of the street or alley shall be held liable to pay one-half of the cost of such sewer and pavement, repavement or surfacing of pavement heretofore laid, and in case of any sidewalks or footwalks, the real estate next adjacent thereto shall be held liable to pay the whole cost of such sidewalks or footwalks; provided, that in case of the construction of any sewer, the amount to be assessed against the abutting property shall be ascertained by taking one-half of the total costs of such sewer, including mains and laterals, on all the streets or alleys or through private property which enters into such mains, and together make one complete sewer line, and from one-half of the total cost and total length of such sewer, the cost per foot shall be ascertained. This sum shall then be multiplied by the number of feet which any lot, part of lot, or other real estate, abuts thereon which is liable to assessment under this act, and the amount so ascertained shall be assessed against the abutting property as hereinbefore provided, but no lot already having sewer ser-

vice and occupied by a dwelling shall be assessed with any portion of the cost of any new sewer unless it is necessary for the owner of such lot to connect with such new sewer.

For a case holding that the language of this subsection to the effect that "no lot already having sewer service shall be assessed with any portion of the cost of any new sewer," does not apply to a property owner who has secured a connection to an unsanitary sewer, which renders necessary the construction by the city of the new sewer, see City of Elkins v. Haggerty, 111 W. Va. 422, 162 SE 313 (1932).

For a case construing similar language in a predecessor of this subsection, that is " * * and for the purpose of paying the expenses and cost of any * * * sidewalks or footwalks, the said council may levy a special assessment for the cost thereof against the real estate benefitted thereby which bounds or abuts thereon. * * * and in case of any sidewalks or footwalks the real estate next adjacent thereto shall be held liable to pay the whole cost of such sidewalks or footwalks," see Lee v. City of Elkins, 99 W. Va. 201, 128 SE 83 (1925).*

For a case construing, in the light of prior state Code provisions (now W. Va. Code, § 11A-2-2), certain language of a predecessor of this subsection which is similar to language hereof, and holding that the city's right to a personal judgment was barred five years after the assessment was laid, see City of Elkins v. Stickley, 114 W. Va. 103, 170 SE 902 (1933).

For a case construing some similar language of a predecessor of this section, and holding that "a legal severance of property is not made by a mere easement over it," and that a sewer laid through an easement over a single lot under single ownership did not create separate lots abutting the sides of such easement, see City of Elkins v. Stickley, supra.

For state law, see W. Va. Code, § 8-18-1 et seq.

(69) The said city council is hereby given full right and authority to require any person or lot owner in said city to connect a sewer leading from his or her house or lot into any public sewer which is located in any public street or alley adjoining the same, and if such house or lot owner fails or refuses so to do after having been given reasonable notice, the said council may enter upon said lot and construct such sewers and may levy the actual cost thereof against the lot upon which the same is built and collect such cost from the owner of such lot in the same manner as city or state taxes are collected.

(70) And, provided, further, that in the case of the grading, regrading, paving, repaving, and surfacing old pavements, the cost of construction, including material and labor, grading, cuts and fills, shall be charged to the abutting and abutting property ratably, according to the extent of the several parcels of real estate adjacent thereto, and assessed and collected from the owners thereof as other assessments and taxes are collected, and the amount of such assessments against the several properties shall be ascertained by the apportionment of the total cost thereof upon any particular street or part of a street or alley so paved or improved, according to the relative frontage of each parcel to the entire extent of such work; and the council may also cause certificates of the several assessments so made, showing the separate parcels of property, the owner, amount of the assessment thereon, with such general description as will identify the property, to be prepared, certified and recorded in the deed of trust record in the office of the clerk of the county court [commission] of Randolph county, and such record shall constitute a lien upon such property in favor of the said city for the amount of such assessment and may be enforced in equity as other liens are enforced. The amount so assessed and for which such certificates are issued shall be payable in ten payments as follows: One-tenth of such amount shall be payable as soon as said assessments are laid; and a like one-tenth, together with interest on the whole remaining unpaid for one year, shall be paid on or before one year thereafter until all of such assessments are paid; providing [provided], that any abutting owner so liable for any portion of the costs of such improvement 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 and all such assessments, and shall be allowed to pay the face of any and all such assessments with interest at six per cent per annum only to the time of such payment.

(71) When such assessments or certificates are perfected, as aforesaid, the council may by resolution entered of record by it, sell, assign or transfer to any person or persons for cash all or any of the assessments or certificates, perfected as herein provided, and apply the proceeds received thereby to the cost of such improvements, providing that the city in transferring such certificates shall not be held as guarantor or in any way liable therefor, except upon the direct action of the council, expressed by resolution of record before sale.

(72) Said certificates shall be exempt from state, county, district and municipal taxes.

(73) When all assessments are paid, the treasurer shall issue a release of such lien which may be recorded in the office of the clerk of the county court [commission].

(74) But in case of grading, paving, or repaving, or otherwise permanently improving any street or alley, before the council shall direct the undertaking of such work, it shall enter an ordinance reciting the necessity thereof and the opinion and judgment of the council favoring such work, and shall cause

survey, profiles and estimates of the cost thereof to be made and filed with the council, and give notice to all parties affected thereby, by publication of notice for two successive weeks in some newspaper of general circulation in the city, describing in a general way the work to be undertaken and appointing a day after the completion of the publication of the said notice, for hearing before the council upon the advisability of undertaking said work, at which time all parties interested therein may appear, either in person or by agent or attorney and shall have access to the said surveys, plans, specifications, etc.; and upon such hearing the council may undertake the said work; provided, the same is favored by three-fifths vote of the members of said council, or may decline to undertake the said work.

(75) In case the council shall determine to undertake said work, it shall be carried on, completed and paid for as hereinbefore provided for; and in which case the certificates or liens acquired on failure of any property owner to pay his assessment and apportionment, such certificates may be issued and sold, or negotiated to the contractor doing the work, or to any other person if the council deems it expedient to do so; provided, the city, in issuing such certificates, shall not be held as guarantor or in any way liable for the payment thereof, except upon a direct action of the council expressed by resolution, of record, before such sale; provided, the city shall pay for street intersections and also engineering, supervision and inspection out of the city treasury.

(76) The council shall have the authority to pass all ordinances not repugnant to the Constitution [and] laws of the United States, and of this state, which shall be necessary or proper to carry into full effect and power, authority and capacity, the jurisdiction which is or shall be granted to or vested in the said city, or in the council, or in any officer or body of officers of said city, and to enforce any or all their ordinances by reasonable fines and penalties, and by imprisoning the offender or offenders, and upon failure to pay any fine or penalty imposed may compel the offender to labor without compensation at and upon any of the public works or improvements undertaken or to be undertaken by said city, or to labor at any work which the said council may lawfully employ [any such offender] upon at such a reasonable rate per diem as the council may fix, until any fine or fines and costs imposed upon any such offender by said city have been fully paid and discharged, after deducting reasonable charges of support while in the custody of the officers of the city; provided, however, that no fine shall be imposed exceeding one hundred dollars and costs, and that no person shall be imprisoned or compelled to labor as aforesaid for more than one hundred days for any one offense. And in all cases where a fine is imposed for an amount exceeding ten dollars and costs, or a person be imprisoned or compelled to labor as aforesaid for a term greater than ten days, an appeal may be taken from such decision upon the same terms and conditions that appeals are taken from the judgment of a justice of this state.

For constitutional provision abolishing office of justice of the peace as of January 1, 1977, see W. Va. Const., art. 8, § 15.

(78)

such fines and penalties shall be imposed and recovered, and such imprisonment inflicted and enforced by and under the judgment of the mayor of said city; or in case of his absence or inability to act, by the clerk of said city, or if he be unable to act, then by any member of the council to be appointed by the council for that purpose; and for his services in trying cases, whether civil, criminal or infractions of the ordinances of the city, the mayor shall be entitled to receive such fees as are paid to justices of the peace for similar services, but in cases of infractions of the ordinances of the city the mayor shall not be paid such fees unless they are collected from the defendant, and in all cases the chief of police shall be entitled to receive such fees as are paid to constables for similar services, except that for cases for the infraction of the ordinances of the city he shall not receive such fees unless collected from the defendant; and, provided, further, that the fees for making any arrest shall be one dollar, to be paid to the officer making the arrest, whether such offender be the chief of police or other officer, if collected from the defendant, but not otherwise.

For 1974 Amendment to state Constitution providing, in pertinent part, that no "judge of a municipal police or mayor's court or any officer thereof" be compensated for his services on a fee basis, but only by salary, see W. Va. Const., art. 8, § 11.

An alternative method of making certain improvements.

(77) In addition to the foregoing powers, the council shall have the full right and power to provide by ordinance for establishing an alternative method for grading, paving, repaving and surfacing streets and alleys, within the city of Elkins, and also for laying sewers and sewer mains within and also without the city limits where necessary to afford adequate drainage facilities to promote the health of the city, whereby the full amount of the costs thereof shall be assessed and charged to adjacent and abutting property, either in case of lots or parts of lots, or to property not laid off in lots, within the city as well as lands and property not within the city limits, in cases where it is or may become necessary to afford such adequate drainage, ratably, according to the extent of continuity of such property.

For state law, see W. Va. Code, § 8-18-1 et seq.

(78) But this alternative method shall be adopted and enforced in cases only where a majority of the owners of such adjacent and abutting property petition therefor in writing.

(79) And then in such cases the council shall prepare plans, profiles, specifications and estimates of costs and appoint a time for hearing thereon, not less than twenty days after giving written notice to all parties affected thereby, but where owners of such property are not known or do not reside in the county of Randolph, such notice may be published in a newspaper of general circulation in the county, for two successive weeks before the hearing, at which hearing all persons affected by such proposed improvement may appear in person or by agent or attorney and be heard in favor of, or in opposition thereto.

(80) If the council shall determine to undertake such work they shall advertise for bids therefor according to said plans and specifications for four successive weeks in two newspapers of general circulation, and award the contract, if satisfactory, to the lowest and best bidder. Such contract shall provide for an alternative method of payment, that is to say, those who elect to do so may pay their proper share of the total cost when the work is finished and the final estimates and assessments are made, or give negotiable notes acceptable to the contractor; and as to the shares of those who do not settle as above provided, the council shall charge them to the property and make out proper assessment certificates showing in detail the property, the work, the name of the owner, amount of the payments, divided into ten equal annual payments, and when duly certified such certificates shall be recorded in the deed of trust records of Randolph county and when so recorded shall be and constitute a lien on such property from that date until paid for such share or assessment, together with the interest thereon from the date of the assessment. And the cash so paid shall go to contractor, and the notes and certificates shall be assigned and transferred to him by the mayor when authorized by order of council and such notes and certificates may be enforced by said contractor or his assignees in any court having jurisdiction thereof. And when payment in full or in part is made, proper releases shall be executed and recorded in the record of the release of liens.

(81) The council shall provide at public expense all engineering, plans, specifications and inspection, and reserve the right of supervision and inspection of all work and material, in progress, as well as final approval of all such work, and the council shall likewise pay the full cost of paving all street and alley intersections.

(82) No part of the proceeds or funds arising from any such improvement shall be applied to any other purpose, but all such proceeds and funds shall be used and applied to the identical job and improvement from which the same arose.

(83) All assessment certificates of deferred payments that may be issued hereunder shall be exempt from taxation.

(84) In contracting such improvements, the council may agree with the contractor to accept the method of payment provided for herein, that is to say, that such contractor, upon completion of the work, shall receive the cash payments, negotiable notes, if any, and the certificates and liens, to be assigned and delivered to him, in full payment and discharge of his claims against the city for such improvement. And upon acceptance and receipt thereof, the city shall not be liable as assignor or otherwise for any part of such contract or work.

For state law, see W. Va. Code, § 8-18-1 et seq.

(85) All acts and parts of acts inconsistent herewith are hereby repealed. (1901, ch. 151, § 28; 1905, ch. 6; 1911, ch. 81; 1915, (Muni. Chtr.), ch. 16; 1917, ch. 115; 1921, (Muni. Chtr.), ch. 8; 1927, (Muni. Chtr.), ch. 3.)

Sec. 28-(a). Authority to erect community building.

The council of the City of Elkins shall have power to erect a community or municipal building or buildings for such purposes as shall be designated by the council. The council shall have power to borrow a sum or sums not exceeding in the aggregate one hundred thousand dollars from the reconstruction finance corporation or other source to be used to pay the cost of construction and of the land upon which the building shall be erected, and may execute a lien or liens upon such land and building to secure payment of such loan or loans and may do any and all other things required by the reconstruction finance corporation or necessary and proper to obtain such loan or loans, to secure payment thereof and to build and maintain the building. The council shall make provision for the payment of such loan or loans from the income of the building but in no event shall it incur any indebtedness or issue any evidance of obligation imposing any liability upon the city or its taxpayers with respect thereto or impose any tax or assessment to provide for the payment of such loan or loans. (1933, 1st Ex. Sess., ch. 67.)

Sec. 29. Mayor's docket and what shall be contained therein; record of cases.

A well bound book, indexed, to be denominated the "Mayor's Docket," shall be kept in the office of the mayor in which shall be noted each case brought before or tried by him together with the proceedings therein, including a statement of the complaint, the warrant or summons, the return, the fact of appearance or nonappearance, the defance, the hearing, the judgment, the costs, and, in case the judgment be one of conviction, the action taken to enforce the same. The record of each case shall be signed by the mayor and the original papers thereof, if no appeal be taken, shall be kept together and preserved in his office. (1901, ch. 151, § 29.)

Sec. 30. Annual estimate of expenses and levy of taxes; statement of receipts and expenditures to be published annually.

The council shall cause to be made up annually and spread upon its minute book an accurate estimate of all sums which are or may become chargeable against the city and which ought to be paid within one year; and it shall order a levy at a meeting held by it in either the month of June or July of each year, of so much as will in its judgment be necessary to pay the same, such levy shall be upon all real and personal property therein subject to a state tax, and shall designate the same as the "general tax," and may include a poll tax of not exceeding two dollars each year upon each able-bodied man therein who is above the age of twenty-one years and not over fifty years of age; which poll tax shall be used exclusively upon the opening, improving and maintaining the roads, streets and alleys of the city, and shall designate the same as the "street tax"; provided, that such levy for the general tax shall not exceed one dollar on every one hundred dollars of assessed value of the property upon which the same is levied; and the said council may also impose such license tax upon dogs and

other animals as they may deem proper and collect the same from the owners of such animals as other taxes are collected and prescribe such rules, regulations and penalties governing the payment of such tax on animals as they may deem reasonable. At least once in each year the council shall cause to be made up and published in one or more of the newspapers published in the city an accurate statement of the revenue received from all sources and of all the expenditures upon all the different accounts for the preceding year. (1901, ch. 151, § 30.)

Editor's note.--W. Va. Const., art. 10, § 2, which authorized a capitation (poll) tax has been repealed; and art. 10, § 1 has been amended so as to limit the aggregate of taxes for any one year on personal property used for agricultural purposes and upon money and securities 50¢ per $100 of valuation; on realty occupied by its owner for a residence to $1 per $100 of valuation; and to $2 per $100 of valuation on all other realty within a municipality. In addition to these constitutional provisions, the general laws of the state have been amended since enactment of this section in 1901 so as to render it almost wholly obsolete.

For general law as to annual financial estimate and tax levies by municipalities, see W. Va. Code, §§ 11-8-9, 11-9-14. As to dog taxes, see W. Va. Code, § 19-20-2.

Sec. 31. City assessor--Powers and duties generally.

Editor's note.--The text of this section is omitted as obsolete. The city no longer has an assessor, as his functions have been taken over completely by the county assessor; see W. Va. Code, ch. 11, arts. 2 through 6. As to payment by county sheriff to municipal treasury of municipal taxes collected by him, see W. Va. Code, § 11A-1-15.

Sec. 32. Same--Assessment books.

Editor's note.--The text of this section is omitted for the reasons stated in the note under § 31 of this Charter.

Sec. 33. Lien for taxes, fines, etc., and enforcement thereof.

There shall be a lien on real estate within said city for city taxes assessed thereon, and for all fines and penalties assessed to or imposed upon the owners thereof, by the authorities of such city, including expenses for making side-

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walks and streets and paving the same, and constructing sewers, and for furnishing water, electric lights or other public utility when furnished by said city, from the time the same are so assessed or imposed, which shall have priority over all other liens except taxes or dues due the United States and the lien for taxes due the state, county or district; and such lien may be enforced by the council in the same manner provided by law for the enforcement of a lien for county taxes, and any time after six months after such lien attaches the city may in its own corporate name proceed to the enforcement of said lien against the real estate chargeable therewith by a suit in equity. If any real estate within said city be returned delinquent for the non-payment of city taxes due thereon, a copy of such delinquent list shall be certified by the council to the auditor of this state and the same may be sold for city taxes, interest and commissions thereon in the same manner, at the same time, and by the same officers as real estate is sold for state taxes; and a return of such sales made to and a deed executed therefor, if not redeemed, in the same manner and with like effect, as the return of sales of real estate sold for state taxes are made and deeds therefor executed to purchasers. (1901, ch. 151, § 33; 1911, ch. 81.)

Editor's note.--The last sentence of this section is now obsolete; see W. Va. Code, § 11A-3-1 et seq.

Sec. 34. Duties, bond, etc., of city collector and treasurer.

It shall be the duty of the city collector and treasurer, when the extended copies of the assessor's books are completed, to receive a copy thereof, receipting to the council for the same, and it shall be his duty to collect from the parties the entire amount of the taxes with which they are severally charged therein, and may proceed to collect the same at any time after the first day of August, and may enforce payment thereof by levy upon the personal property and sale thereof, of the person so charged with taxes at any time after the first of October next after said taxes are assessed; said taxes shall be a lien upon the property upon which they are assessed from and after the time the assessor's books are completed, verified and returned to the city council, and shall write the word "paid" opposite the name of each person who pays the taxes assessed against him and shall also give to the person paying such taxes a receipt therefor; provided, however, that said assessor [collector] and treasurer may distrain at any time for any taxes assessed against a person who is about to remove or who has removed from said city after such taxes are assessed, and the books returned as aforesaid. He shall also receive such other moneys of the city as he is authorized by this act [Charter] to receive, and also all moneys ordered by the council to be paid to him, giving receipt therefor to the parties paying the same, and shall keep an accurate, itemized account of all moneys received by him; and his books shall at all times be open for the inspection of the mayor, council, city clerk, and to any taxpayer of the city. He shall pay out the money in his hands only upon the order of the council upon orders signed by the mayor and city clerk and keep an itemized statement of the money so paid out by him. He shall on or before the last meeting of the council in each year just before the expiration of the term of office of the mayor, and at such other times as the

council may require, present to the council a full and complete statement of all the moneys with which he is chargeable or that have been received by him and not previously accounted for, and shall at the same time, in like manner, furnish a complete statement, by separate items of all disbursements made by him during such period, with his vouchers evidencing the same. He shall receive all taxes upon licenses and receipt to the party paying the same by endorsement upon the permit granted by order of the council, or mayor as the case may be.

Editor's note.--The provisions of this subsection as to assessment of property for taxes and the collection of taxes are now obsolete, inasmuch as the county assessor and the sheriff perform the duties herein imposed upon the city collector and treasurer; see W. Va. Code, § 8-13-1, ch. 11, art. 1, and ch. 11A.

He shall receive upon all moneys coming into his hands and paid out by him as his compensation for receiving and disbursing the same such sum as may be fixed by the council, not to exceed five per cent thereof. He shall upon the expiration of his term of office turn over to the council all books and other property in his possession belonging to the city, except the money in his hands, which he shall turn over to his successor upon the order of the council as hereinbefore provided; and shall, before entering upon the duties of his office, execute a bond with good security payable to said city, in a penalty of not less than double the estimated amount of money that is liable to come into his hands each year during his term of office, conditioned that he will faithfully discharge the duties of his office and account for and pay over as required by law and the orders, ordinances, rules and regulations of the council of said city, all money which shall come into his hands, which bond shall be subject to the approval of the council. He shall be chargeable with all the city taxes, levies and assessments and money of the city which shall come into his hands and shall account therefor. (1901, ch. 151, § 34.)

Editor's note.--The city collector and treasurer no longer receives any percentage of city money collected by him.

Sec. 35. License ordinances and payment of tax thereon.

The council shall prescribe by ordinance the time and manner in which licenses of all kinds shall be applied for and granted, and shall require the payment of the tax thereon to the city collector and treasurer before the delivery thereof to the person applying therefor. (1901, ch. 151, § 35.)

Sec. 36. Provisions of law applicable to licenses and expiration date of certain licenses.

The provisions of the section 29 of chapter 32 of the Code of West Virginia shall be deemed applicable to licenses of a similar character to those therein

mentioned when granted by or under authority of the council of said city; licenses for the keeping of dogs, or other animals, shall also expire on the thirteenth day of April next after they are granted. (1901, ch. 151, § 36.)

Editor's note.--Chapter 32 of the state Code as of 1901 related to state licenses, and the subject matter thereof, as in effect at the time of adoption of the Official Code of West Virginia, 1931, was carried over into that Code as article 12 of Chapter 11, which article has since been repealed, and replaced by a new article 12 which related to state business franchise registration certificates. See, however, W. Va. Code, § 11-12-4 as to authority of municipalities to impose license taxes pursuant to W. Va. Code, § 8-13-4, up to the amount of state license tax in effect on January 1, 1970, "with like effect as if this article (art. 12, ch. 11) had not been enacted."

The provisions of this section as to dog taxes are completely obsolete, see W. Va. Code, § 15-20-2.

Sec. 37. Condemnation of real estate for public use.

The council shall have a right to institute and prosecute proceedings in the name of the city for condemnation of real estate for streets, alleys, roads, drains, sewers, market grounds, city prison, water works, electric light plant or other works, or purpose of public utility. Such proceedings shall conform to the provisions of chapter 42, [eminent domain] of the Code of West Virginia, and the expenses thereof shall be borne by the city, except in cases where it is proper under said chapter to charge such expenses or any part thereof against the defendant. (1901, ch. 151, § 37.)

For general law as to eminent domain, see W. Va. Code, ch. 54.

Sec. 38. Charter of South Elkins abolished.

The Charter of the Town of South Elkins is hereby abolished. (1901, ch. 151, § 38.)

Sec. 39. Ordinances, etc., not inconsistent and bonds, etc., remain in effect.

All the ordinances, by-laws, resolutions and rules of the city of Elkins in force on the day preceding the passage of this act [Charter], which are not inconsistent therewith, shall be and remain in full force over the whole of the territory embraced in the boundary of said city as established by this act, and the officers in office in the city of Elkins at the time this act takes effect shall

remain in office until their successors are elected, or appointed, and qualified under the provisions of this act; and after this act takes effect, shall have jurisdiction over the whole of the territory embraced in the boundary specified in this act; but nothing in this act shall be construed or held to in any way affect or impair any of the bonds or obligations of said city of Elkins issued or contracted prior to the passage of this act; on the contrary, all such bonds and obligations shall be and remain in full force and effect just as though this act had not been passed, except that the whole of the taxable property of persons residing within the corporate limits of said city as created by this act shall be subject to taxation to pay and discharge such bonds and obligations. (1901, ch. 151, § 39.)

Sec. 40. City to take over corporate assets and assume obligations of town of South Elkins.

The corporate authorities of the town of South Elkins shall, before July first, 1901, turn over to the corporate authorities of the city of Elkins all corporate assets, including money, taxes, license fees payable, and all other corporate property, to the council of the city of Elkins to be disposed of by it as corporate property now owned by said city of Elkins is disposed of; and if said town of South Elkins at the time this act [Charter] takes effect has any outstanding contracts or obligations proper for it to contract, including licenses granted, the said city of Elkins shall assume the same and carry the same into execution in manner, form and effect as contracted by said town of South Elkins. (1901, ch. 151, § 40.)

Sec. 41. Duties of council as to first election, etc.

The council in being in the city of Elkins at the time this act [Charter] shall take effect shall provide places for voting in the several wards in said city and appoint commissioners residing in each ward to hold and conduct the first election hereinbefore provided to be held, and shall pass all proper ordinances and orders to give this act full force and effect. (1901, ch. 151, § 41.)

Sec. 42. Former rights, powers, etc., of city undisturbed.

The said city shall succeed to all the rights, powers and responsibilities of the City of Elkins as they exist the day preceding the day on which this act [Charter] takes effect, and shall enjoy such rights, exercise such power and discharge such responsibilities in the same manner as the same should have been enjoyed, exercised or discharged if this act had not been passed. (1901, ch. 151, § 42.)

For a case holding that this section preserves to the city all of the rights, powers and responsibilities which it had prior to enactment of this Charter, (such rights, etc., being contained in the then W. Va. Code, ch. 47); and that by virtue of the lan-

guage of § 28 of that ch. 47 (now set out in W. Va. Code 1931, as amended, § 8-12-5, subsec. (15)), the city council is empowered to "make regulations guarding against danger or damage by fire," see Harvey v. City of Elkins, 65 W. Va. 305, 64 SE 247 (submitted 1907, decided 1909).

Sec. 43. Inconsistant ordinances and acts repealed.

All ordinances of the City of Elkins as they exist at the time of the passage of this act [Charter] which are inconsistent therewith are hereby abrogated, and all acts and parts of acts inconsistent with any of the provisions of this act are hereby repealed. (1901, ch. 151, § 43.)

Editor's note.--The Elkins Charter act was approved by the governor February 18, 1901, in effect ninety days from passage.

(f) The city shall make such reports, in such form and containing such information, as the state agency may, from time to time, require, and shall comply with such provisions as the state agency or as the federal agency, mendoned in subdivision (3) of subsection (a) of section 5-7-3 of the Code of West Virginia, may, from time to time, find necessary to ensure the correctness and veracity of such reports.

(g) The city agrees to pay into the contribution fund, as defined by section 5-7-6 of the Code of West Virginia, such amounts as are required to be paid by subsections (c) and (d) of section 5-7-3 of the Code of West Virginia.

(h) The "state agency" is authorized to terminate this plan in its entirety, if it finds that there has been a failure to comply substantially with any provisions contained in this plan or any provisions of article I, chapter 5 of the Code of West Virginia, and necessary federal laws and regulations, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and consistent with applicable federal law. (11-20-50; 4-16-53.)

Sec. 2-8. City to be participating public employer; state employees' retirement system adopted.

The common council, having elected on July 1, 1961, by vote of three fifths of its members, to have the city become a participating public employer and thereby include its eligible officers and employees in the membership of the state employees' retirement system, hereby declares that the city shall continue to be a participating public employer and shall conform to all applicable provisions of sections 5-10-1 through 5-10-51 of the Code of West Virginia.

For state law as to municipalities becoming participating public employers within state public employees retirement system, see W. Va. Code, §§ 5-10-16, 8-22-1.

As to firemen's pension and relief fund, see §§ 8-22. to 8-25 of this Code. As to police pension and relief fund, see §§ 14-5 to 14-11.

Article II. The Common Council.

For charter provisions as to municipal authorities, their salaries, and composition of the common council, see Char., § 4. As to the qualifications of mayor and councilmen, see Char., § 6. As to election and term of mayor, see Char., § 8. As to election and term of councilmen, and filling vacancy in office of councilman, see Char., § 9. As to disqualification of councilmen, see Char., § 9. As to removal of elective and appointive officers

for malfeasance, etc., see Char., § 15. As to oath of officers, see Char., §§ 17, 23. As to when term of office begins, see Char., § 18. As to result of failure to qualify for office, see Char., § 19. As to duty of mayor to make recommendations to the council, see Char., § 20. As to exercise by the council of city's corporate powers, see Char., § 5. As to powers and duties of common council generally, see Char., §§ 15, 28, 35 and 37.

For state law as to composition of municipal governing bodies and the qualifications and election of mayor, councilmen and recorder, see W. Va. Code, § 8-5-7. As to oath of office, see W. Va. Code, § 8-5-8. As to terms of office, see W. Va. Code, § 8-5-9. As to filling vacancies in office, see W. Va. Code, § 8-5-10. As to compensation of officers, see W. Va. Code, § 8-5-12. As to powers and duties of council with respect to ordinances, see W. Va. Code, § 8-11-1 et seq. As to general and specific duties, etc., of common council, see W. Va. Code, § 8-12-1 et seq.

Sec. 2-7. Clerk of the council; records generally.

The city clerk shall be ex officio clerk of the common council and shall keep all records of the council, as required by the city Charter and general laws of the state, as well as by this Code and other ordinances, resolutions and orders of the common council; and he shall, in general, perform for the council such duties as are normally performed by recording and corresponding secretaries. (Code 19.2, ch. 8, § 3.)

For charter provisions that record of proceedings, ordinances, resolutions, etc., be properly kept and indexed, and open to inspection by persons interested, see Char., § 23. As to duty of city clerk to keep records of the common council, see Char., §§ 23, 27. As to requirement that, at each meeting of the council, the minutes of the last meeting be read, corrected and authenticated, see Char., § 24.

For state law as to records required to be kept by municipal governing bodies; and requirement for reading, correcting and authenticating minutes of meetings, see W. Va. Code, § 8-9-3. As to duty of municipal recorders (clerks) to keep the records of governing bodies, see W. Va. Code, § 8-10-3.

special meetings; and authority of members present to compel the attendance of absent members under reasonable penalties, see Char., § 28. As to the quorum, see Char., § 22. As to city clerk being acting mayor during absence or disability of mayor or when office of mayor is vacant, see Char., § 21.

For state law as to who presides at meetings of municipal governing bodies and what constitutes a quorum, see W. Va. Code, § 8-9-1. As to requirements for open meetings of governing bodies, with exceptions, see W. Va. Code, ch. 6, art. 9A.

Sec. 2-9. Rules.

(a) The common council may, by resolution, adopt such rules as may be deemed desirable for the conduct of its meetings, the transaction of its business and the official conduct of its members, and may include therein reasonable penalties for the violation thereof; but no such rule shall be inconsistent with the state law, the Charter or this Code. Such rules may include, among other subjects, the following:

(1) The appointment, jurisdiction and duties of standing and special committees of the council.

(2) Attendance at meetings of the council by members and by others.

For charter provisions as to authority of common council to compel attendance of its members at meetings, see Char., §§ 28, 28, subsec. (65).

(3) Investigations and hearings, the compulsory attendance thereat of witnesses and the production of books and papers thereat as evidence.

For state law as to authority of common council to investigate and inquire into all matters of concern to the city and its inhabitants, see W. Va. Code, § 8-12-5, subsec. (48). As to power of common council to compel attendance of witnesses and production of books and papers, see W. Va. Code, § 8-12-3, subsec. (c).

(4) Parliamentary procedure.

(5) The preservation of order at meetings.

(d) Order of recognition. If two or more persons desire to address the common council at the same time, the presiding officer shall recognize the person who first addressed the chair, and the other person shall at once be seated. (Code 1942, ch. 4, § 1, rules 25, 33 through 35.)

Sec. 2-12. Voting.

(a) Method. All votes taken in the common council, except for the election of city officers, shall be by yeas and nays; but, upon the demand of the mayor, any member made before such vote is taken, the roll shall be called and a record made by the city clerk of the vote of every member voting.

(b) Roll calls. All roll calls made for a vote in the common council shall be made alphabetically, and every member shall vote when his name is called, unless personally interested in the matter being voted upon or excused from voting by the council.

(c) Councilmen to elect city officers by ballot. The city officers who are appointed by the common council shall be elected by ballot, and no person shall be declared elected unless he receives a majority of the votes cast. (Code 1942, ch. 4, § 1, rules 14, 15, 32.)

For charter provision as to mayor voting in council only to break a tie, see Char., § 25. As to requirement for majority vote unless otherwise provided, see Char., § 28. As to recording of ayes and noes upon call of any member, see Char., § 24.

For state law prohibiting member of municipal governing body from voting on any subject on which he may be interested other than as a citizen, see W. Va. Code, § 8-9-1. As to requirement that yeas and nays be recorded upon call of any member, see W. Va. Code, § 8-9-3.

Sec. 2-13. Ordinance procedures—Generally.

(a) It shall not be necessary, except where otherwise provided by state law or by this Code, for the common council to publish in a newspaper any proposed ordinance prior to the adoption thereof or any enacted ordinance subsequent to the adoption thereof; and any and all ordinances shall be adopted in accordance with the following requirements, except where different or additional requirements are specified in other provisions of state law or this Code; in which event, such other different or additional requirements shall be applicable:

(1) A proposed ordinance shall be read by title at not fewer than two meetings of the common council, with at least one week intervening

public health, safety or morals, and by affirmative vote of two thirds of the members elected to the common council.

(2) When otherwise provided by state law.

The nature of any such emergency enactment shall be set out in full in the ordinance. (Code 1942, ch. 4, § 1, rules (22), (23).

For state law as to ordinances and ordinance procedures, see W. Va. Code, § 8-11-1 et seq. For state law basis of this section, see W. Va. Code, § 8-11-4.
As to effect of repeal or expiration of ordinance, see § 1-6 of this Code.

Sec. 2-14. Same--Attestation; record of ordinances.

Each ordinance, upon its final passage, shall be signed by the presiding officer of the common council and attested to by the city clerk, who shall then number it consecutively in relation to other ordinances, and record it in the record of ordinances.

Sec. 2-15. Same--Ordinances to repeal, amend or add to provisions of this Code, and records thereof.

(a) Each bill which proposes an ordinance to repeal, amend or add to any portion of this Code, and each bill which proposes an ordinance of a general and permanent nature, suitable for inclusion in this Code though constituting new subject matter not therein contained, shall be so drafted as to specify the specific section numbers, subsections, etc., of this Code which are to be repealed or amended and, with respect to additions and to new subject matter, as to provide appropriate chapter, article, section, etc., numbers therefor; and each amendment of and addition to this Code shall be set out in full, and appropriate chapter and article headings and section catchlines shall be included.

(b) Upon the adoption of an ordinance to repeal, amend or add to any portion of this Code or to include new subject matter in this Code, the city clerk shall separate the several chapters, articles, sections, etc., of such ordinance and enter them in their proper places in each file copy of this Code, and shall remove therefrom any portion so repealed or amended and, in the margin of each insertion in the file copies of this Code, he shall note and initial the date of passage, effective date and number of the amending or repealing ordinance.

(c) Items removed from the file copies of this Code, pursuant to subsection (b) of this section, shall be maintained by the city clerk in a separate, loose-leaf volume, arranged properly according to their respective chapters, articles, sections, etc., and each item so removed from the file copies of this

THE CITY OF ELKINS

RESOLUTION ON OPEN GOVERNMENTAL PROCEEDINGS RULES

Pursuant to Chapter 6, Article 9A, Section 3 of the West Virginia Code, the Council of The City of Elkins does hereby adopt the following rules to make available, in advance, the date, time, place and agenda of all regularly scheduled meetings of the Council, and the date, time, place and purpose of all special meetings of the Council to the public and news media (except in the case of an emergency requiring immediate action) as follows:

1. Regular Meetings. A notice shall be posted and maintained by the City Clerk at the front door or bulletin board of the City Hall of the date, time and place fixed and entered of record by Council for the holding of regularly scheduled meetings. In addition, a copy of the agenda for each regularly scheduled meeting shall be posted at the same location by the City Clerk not less than 72 hours before such regular meeting is to be held. If a particular regularly scheduled meeting is canceled or postponed, a notice of such cancellation or postponement shall be posted at the same location as soon as feasible after such cancellation or postponement has been determined.

2. Special Meetings. A notice shall be posted by the City Clerk at the front door or bulletin board of the City Hall not less than 72 hours before a specially scheduled meeting is to be held, stating the date, time, place and purpose for which such special meeting shall be held. If the special meeting is canceled, a notice of such cancellation shall be posted at the same location as soon as feasible after such cancellation has been determined.

These rules regarding notice of meetings shall replace any and all previous rules heretofore adopted by Council.

Adopted June 17, 2004.

By: _____
Mayor

By: _____
City Clerk

CERTIFICATION

I, Philip J. Graziani, Jr., duly appointed City Clerk of The City of Elkins do hereby certify that the foregoing is a true and accurate copy of a Resolution adopted by the City Council of The City of Elkins at a regular meeting of City Council held June 17, 2004, pursuant to proper notice, at which meeting a quorum was present and acting throughout.

Dated this June 18, 2004.

By: Philip J. Graziani
City Clerk

06/10/04
255620.00009

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

I, **JUDITH ANN GUYE**, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly, faithfully and impartially, to the best of my ability, discharge the duties of **MAYOR** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

Judith A. Guye
JUDITH A. GUYE

Subscribed and sworn to before me this 28th day of March 2007.

Philip J. Graziani
Philip J. Graziani, Jr., City Clerk

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

To: **Philip J. Graziani, Jr.**

It is hereby certified that on December 2, 2004 Elkins Common Council adopted Resolution No. R033, appointing you Elkins City Clerk for a term of two years to expire December 31, 2006.

Philip J. Graziani, Jr., City Clerk

I, **PHILIP J. GRAZIANI, JR.**, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of **CLERK** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

Philip J. Graziani, Jr.

401 Davis Avenue, Elkins, West Virginia 26241 Telephone: (304) 636-1414 - Fax: (304) 636-7866

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

To: **Linda L. Crosston**

It is hereby certified that on September 15, 2005 Elkins Common Council adopted Resolution 052, appointing you Elkins City Treasurer for a two-year term commencing October 1, 2005.

Philip J. Graziani

Philip J. Graziani, Jr., City Clerk

I, **LINDA L. CROSSTON**, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, that I will faithfully and impartially, to the best of my ability, discharge the duties of **TREASURER** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

Linda L. Crosston

Linda L. Crosston

Subscribed and sworn to before me.

Philip J. Graziani

Philip J. Graziani, City Clerk

401 Davis Avenue, Elkins, West Virginia 26241 Telephone: (304) 636-1414 - Fax: (304) 636-7866

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

I, **ROBERT N. BECKWITH**, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly, faithfully and impartially, to the best of my ability, discharge the duties of **FIRST WARD COUNCILMAN** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

Robert N. Beckwith
ROBERT N. BECKWITH

Subscribed and sworn to before me this 31st day of March 2005.

Philip J. Graziani
Philip J. Graziani, Jr., City Clerk

401 Davis Avenue, Elkins, West Virginia 26241 Telephone: (304) 636-1414 - Fax: (304) 636-7866

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

I, ROBERT ARDEN WOOLWINE, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly, faithfully and impartially, to the best of my ability, discharge the duties of **FIRST WARD COUNCILMAN** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

ROBERT A. WOOLWINE

Subscribed and sworn to before me this 28th day of March 2007.

Philip J. Graziani, Jr., City Clerk

401 Davis Avenue, Elkins, West Virginia 26241 Telephone: (304) 636-1414 - Fax: (304) 636-7866

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

I, **HAZEL KUMP BURFORD**, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly, faithfully and impartially, to the best of my ability, discharge the duties of **SECOND WARD COUNCILWOMAN** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

Hazel K. Burford
HAZEL K. BURFORD

Subscribed and sworn to before me this 28th day of March 2007.

Philip J. Graziani
Philip J. Graziani, Jr., City Clerk

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

I, **THOMAS Z. HENSIL**, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly, faithfully and impartially, to the best of my ability, discharge the duties of **SECOND WARD COUNCILMAN** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

Thomas Z. Hensil
THOMAS Z. HENSIL

Subscribed and sworn to before me this 31st day of March 2005.

Philip J. Graziani
Philip J. Graziani, Jr., City Clerk

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

I, ROBERT JENNINGS MALCOLM, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly, faithfully and impartially, to the best of my ability, discharge the duties of **THIRD WARD COUNCILMAN** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

ROBERT J. MALCOLM

Subscribed and sworn to before me this 28th day of March 2007.

Philip J. Graziani, Jr., City Clerk

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

I, **CARMAN L. METHENY**, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly, faithfully and impartially, to the best of my ability, discharge the duties of **THIRD WARD COUNCILMAN** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

Carman L Metheny
CARMAN L. METHENY

Subscribed and sworn to before me this 31st day of March 2005.

Philip J. Graziani
Philip J. Graziani, Jr., City Clerk

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

I, **IRVIN D. TALBOTT, JR.**, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly, faithfully and impartially, to the best of my ability, discharge the duties of **FOURTH WARD COUNCILMAN** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

IRVIN D. TALBOTT, JR.

Subscribed and sworn to before me this 28th day of March 2007.

Philip J. Graziani, Jr., City Clerk

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

I, **KAREN L. WILMOTH**, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly, faithfully and impartially, to the best of my ability, discharge the duties of **FOURTH WARD COUNCILWOMAN** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

Karen L. Wilmoth
KAREN L. WILMOTH

Subscribed and sworn to before me this 31st day of March 2005.

Philip J. Graziani
Philip J. Graziani, Jr., City Clerk

&LOM

CITY OF ELKINS

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

I, **JAMES S. BIBEY**, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly, faithfully and impartially, to the best of my ability, discharge the duties of **FIFTH WARD COUNCILMAN** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

James S Bibey

JAMES S. BIBEY

Subscribed and sworn to before me this 31st day of March 2005.

Philip J. Graziani

Philip J. Graziani, Jr., City Clerk

401 Davis Avenue, Elkins, West Virginia 26241 Telephone: (304) 636-1414 - Fax: (304) 636-7866

OATH OF OFFICE

State of West Virginia }
County of Randolph }
City of Elkins }

I, **VAN T. BROUGHTON**, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and that I will truly, faithfully and impartially, to the best of my ability, discharge the duties of **FIFTH WARD COUNCILMAN** of the City of Elkins, West Virginia so long as I may continue therein. So help me God.

Van T. Broughton
VAN T. BROUGHTON

Subscribed and sworn to before me this 28th day of March 2007.

Philip J. Graziani
Philip J. Graziani, Jr., City Clerk

Article II. Sanitary Board.

For state law relating to municipal sanitary boards, see W. Va. Code, ch. 16, art. 13, especially §§ 16-13-18 and 16-13-18a.

Sec. 16-11. Established; composition; qualifications, appointment and term of members; vacancies.

There is hereby created a sanitary board of the city, which shall be composed of the mayor and two persons appointed by the common council, one of whom, during any construction period, must be a registered professional engineer, and the engineer member of the board need not be a resident of the city. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. The appointed members of the board shall serve their terms subject to the will and pleasure of the common council. 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, appointment of a successor shall be made in similar manner for a term of three years. Vacancies shall be filled for an unexpired term and such substitutions shall be made in the same manner as was the original appointment. (7-18-57, § 1.)

Sec. 16-12. Eligibility of city personnel.

No officer or employee of the city holding a paid or unpaid office or position shall be eligible to appointment on the sanitary board until at least one year from the expiration of the term of his public office or employment. (7-18-57, § 2.)

Sec. 16-13. Officers and bylaws.

The mayor shall be chairman of the sanitary board, which shall elect a vice-chairman from its members and shall designate a secretary and treasurer, though the secretary and treasurer may be one and the same person, who need not be members of the sanitary board. The vice-chairman, secretary and treasurer shall hold office, as such, at the will of the sanitary board. The sanitary board shall have power to establish bylaws, rules and regulations for its own government. (7-18-57, § 3.)

Sec. 16-14. Compensation of members and allowances for expenses; bond of treasurer.

Each member of the sanitary board shall receive such compensation for his services as the common council may, from time to time, prescribe, 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 their services as the council may, from time to time, prescribe, and the treasurer shall give bond in such amount as the council may, at any time, require.

All compensation, as well as expenses incurred by the sanitary board, its officers and employees, shall be paid solely from funds provided under the authority of chapter 16, article 13 of the Code of West Virginia. (7-18-57, § 4.)

Sec. 16-15. Authority as to supervision and control of sewerage system.

The construction, acquisition, improvement, equipment, custody, operation and maintenance of all works for the collection, treatment and disposal of sewage within or without the corporate limits of the city, the collection of revenues therefrom for the services rendered thereby and the employment of all engineers, architects, inspectors, superintendents, managers, collectors, attorneys and other personnel, as, in the judgment of the sanitary board, may be necessary to the execution of its powers and duties, shall be under the supervision and control of the sanitary board. (7-18-57, § 5.)

Sec. 16-16. Statutory authority of board.

The sanitary board shall have, in addition to the powers enumerated herein, all other powers provided for such boards by chapter 16, article 13 of the Code of West Virginia. (7-18-57, § 6.)

Article III. Private Systems.

For charter provisions as to authority of common council to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome, see Char., § 28, subsec. (24).

For state law as to authority of city to prevent injury or annoyance to the public or to individuals from anything dangerous, offensive or unwholesome, see W. Va. Code, § 8-12-5, subsec. (13). As to authority of city to provide for the elimination of hazards to the public health and safety and to abate public nuisances, see W. Va. Code, § 8-12-5, subsec. (23).

Sec. 16-17. Transportation of contents of cesspool, etc.

No person shall at any time remove the contents of any cesspool or privy vault through, along or over any of the streets or public or private ways of the city, except between the hours of 10:00 P.M. and 4:00 A.M., nor shall such contents be removed at any time unless the vehicle to be used for such purpose is so constructed as to be watertight and securely covered, so that the odors therefrom cannot escape. (Code 1942, ch. 17, § 11.)

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 2008 A
(The Huntington National Bank)

PETITION OF SANITARY BOARD

The Sanitary Board of The City of Elkins (the "City") hereby petitions the Council of the City to enact an ordinance directing that sewer revenue bonds of the City be issued pursuant to the provisions of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended, such Bonds to be in an amount not to exceed $650,000, for the purpose of paying costs of the acquisition and construction of additions, betterments and improvements to the existing public sewerage system of the City and paying the costs of issuance and related costs.

Directed this 4th day of March, 2008.

SANITARY BOARD OF THE CITY OF ELKINS

By: Judith A. Heye
Its: Chairman

04.29.08
255620.00016

ORDINANCE NUMBER 057

AN ORDINANCE TO AMEND AND REENACT THE RATES, RULES AND REGULATIONS FOR FURNISHING SEWAGE AND SEWAGE DISPOSAL SERVICE AT ELKINS AND VICINITY, RANDOLPH COUNTY, WEST VIRGINIA BY INCREASING THE RATES CHARGED THEREFORE IN SCHEDULE NOS. 1, 2, 3 AND 4 OF THE SCHEDULE OF RATES

WHEREAS, Chapter 24, Article 2, Section 4 (b) of the West Virginia Code, effective July 1, 1981, as amended, gives to municipally operated public utilities the approval authority to set their own rates and charges, and;

WHEREAS, on February 6, 2006, the Common Council of the City of Elkins adopted an Ordinance increasing it rates for furnishing sewage and sewage disposal service in two phases in order to provide sufficient revenues to amortize the cost of capital improvements to its sewer system mandated by regulators and to provide working capital to pay the expenses of operations; and

WHEREAS, upon the filing of protests to the increased rates adopted February 6, 2006, the Public Service Commission established a proceeding for review of the City's increased sewer rates; and,

WHEREAS, the Public Service Commission of West Virginia, by a Final Order dated July 11, 2006, in Case No. 06-0209-S-MA, approved a two-step increase in the City's sewer rates based upon the Commission Staff's recommended revenue requirements and rate design; and

WHEREAS, step one of the Public Service Commission-approved sewer rates became effective July 21, 2006; and

WHEREAS, step two of the Public Service Commission-approved rates, designed to cover the increased debt service and operation and maintenance expenses associated with the City's sewer improvement construction project, and are not to become effective until issuance of a certificate of substantial completion of the improvement project; and

WHEREAS, bids received on the City's sewer improvement construction project are higher than those initially anticipated, resulting in an increase in the project cost; and

WHEREAS, in order to meet the increased cost of the sewer improvement project resulting from the higher bids, the Common Council of the City of Elkins deems it necessary to increase the rates and charges for the furnishing of services to treat and dispose of sewerage, said rates to become effective upon issuance of a certificate of substantial completion of the improvement project.

THEREFORE, THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA HEREBY ORDAINS:

The following rates, fees and charges for sewer service provided by it to customers throughout its territory served, are hereby fixed and determined as rates, fees and charges to be charged in lieu of those step two rates, fees and charges previously approved by the Public Service Commission of West Virginia in Case No. 06-0209-S-MA to become effective upon completion of the sewer improvement project.

THE FOLLOWING RATES ARE TO BECOME EFFECTIVE AFTER ISSUANCE OF CERTIFICATE OF SUBSTANTIAL COMPLETION OF SEWER IMPROVEMENT PROJECT
APPROVED IN PSC CASE NO. 06-0079-S-CN

SECTION ONE – RATES, RULES AND REGULATIONS

SCHEDULE NUMBER 1

APPLICABILITY

Applicable to entire territory served.

AVAILABILITY OF SERVICE

Available for domestic, commercial, and industrial sewer service

RATES

First 750,000 gallons used per quarter - $7.07 per 1,000 gallons.
Over 750,000 gallons used per quarter - $2.81 per 1,000 gallons.

MINIMUM CHARGE

No bill shall be rendered for less than $42.42 per quarter based upon 6,000 gallons treated.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, within twenty (20) days of the date of 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.

MONTHLY OR BI-MONTHLY PAYMENT BILLINGS

The above rates and charges may be adjusted to a monthly or bi-monthly basis, providing the adjustment results in no lower charges.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility or up to a maximum of $25.00 will be imposed upon any customer whose check for payment is returned by the bank due to insufficient funds.

TAP FEE

The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of $400.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap to the system.

LEAK ADJUSTMENT

$0.46 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

SCHEDULE NUMBER 2

APPLICABILITY

Applicable to Teaberry Hills Subdivision.

AVAILABILITY OF SERVICE

Available for domestic service in un-metered housing projects or subdivisions.

FLAT RATE (Customers with non-metered water supply)

No bill shall be rendered for less than $95.45 per quarter.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full within twenty (20) days of the date of 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.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility or up to a maximum of $25.00 will be imposed upon any customer whose check for payment is returned by the bank due to insufficient funds.

TAP FEE

The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of $400.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap to the system.

LEAK ADJUSTMENT

$0.46 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

SCHEDULE NUMBER 3

APPLICABILITY

Applicable within and without the corporate limits of the City of Elkins.

AVAILABILITY OF SERVICE

Available to Midland Public Service District.

METERED RATES - (Based on metered water sold)

$2.386 per M gallons

APPLICABILITY

Applicable within and without the corporate limits of the City of Elkins.

AVAILABILITY OF SERVICE

Available to City of Elkins for Treatment of Backwash.

METERED RATES - (Based on metered water sold)

$1.682 per M gallons

SCHEDULE NUMBER 3A
INDUSTRIAL WASTE

APPLICABILITY

Applicable within and without the corporate limits of City of Elkins.

AVAILABILITY OF SERVICE

Applicable where sewer customer obtains water wholly or partly from a source other than the Municipal Water Works of the City of Elkins.

Sewer user shall make application in writing, showing type of waste to be delivered to the sanitary sewer system of the City of Elkins, and shall not deliver said waste until written permission has been given by the Sanitary Board of the City of Elkins.

Sewer user shall provide, at the end of each calendar quarter, to the Sanitary Board of the City of Elkins, an officially signed notification showing the approximate quantity in gallons of waste delivered to the sanitary sewer system of the City of Elkins. Upon receipt of such notification billing shall be made applying the rates in Schedule Number 1.

SCHEDULE NUMBER 4

APPLICABILITY

Applicable outside the corporate limits of the City of Elkins.

AVAILABILITY OF SERVICE

Available to Leadsville Public Service.

METERED RATES (Based on metered water sold)

$2.689 per M gallons

SECTION TWO – EFFECTIVE DATE

The Rates and Charges provided herein shall be effective after the issuance of a certificate of substantial completion of the sewer upgrade project approved by the Public Service Commission in Case No. 06-0079-S-CN, unless permitted to be placed into effect at an earlier date by Order of the Public Service Commission of West Virginia.

SECTION THREE – SEPARABILITY; REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are separable, and if any clause, provision or section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. Upon the effective date of the fees, rates and charges as herein set forth, all ordinance, resolutions, orders or part thereof in conflict with the provisions of this Ordinance are, to the extent that the provisions of this Ordinance do not touch upon the provisions of prior ordinances, resolutions, orders or parts thereof, the same shall remain in full force and effect.

SECTION FOUR – STATUTORY NOTICE AND PUBLIC HEARING

Upon introduction hereof, the City Clerk shall publish Notice of this Ordinance in *The Inter-Mountain*, being a newspaper published and of general circulation in Randolph County, West Virginia, as a Class II publication. The first publication shall be made at least ten (10) days prior to the date set for the public hearing on the ordinance and the second publication at least five (5) days before the meeting of the City Council at which a final reading and vote on the ordinance will be held. Said notice shall state that this Ordinance has been introduced, and that any person interested may appear before Council on the **19th** day of **October, 2006**, at **7:00 p.m.** and present protests, if any. At such hearing all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper on the premises.

Further, said Notice shall advise the public that a copy of this ordinance is available for public inspection.

Passed on First Reading October 3, 2006.

Passed on Second Reading October 19, 2006.

Passed on Third and Final Reading Following a Public Hearing on November 9, 2006.

CITY OF ELKINS, WEST VIRGINIA

Judith A. Guye, Mayor

Attest:

Philip J. Grazjani, City Clerk

State of West Virginia, County of Randolph, ss.

LEGAL ADVERTISEMENT

LATE PUBLICATION

PUBLIC NOTICE OF PROPOSED ORDINANCE RELATING TO SEWER RATES, FEES AND CHARGES.

Notice is hereby given, that, on October 3, 2006, the CITY OF ELKINS caused to be read before its City Council, an Ordinance proposing fees, rates, and charges in lieu of those rates previously approved by the Public Service Commission of West Virginia, for furnishing sewer service to customers in Randolph, West Virginia and is proposing the adoption of the same. The proposed ordinance is titled:

AN ORDINANCE TO AMEND AND REENACT THE RATES, RULES AND REGULATIONS FOR FURNISHING SEWAGE AND SEWAGE DISPOSAL SERVICE AT ELKINS AND VICINITY, RANDOLPH COUNTY, WEST VIRGINIA BY INCREASING THE RATES CHARGED THEREFORE IN SCHEDULE NOS. 1, 2, 3 AND 4 OF THE SCHEDULE OF RATES.

ORDINANCE NUMBER 057

The City Council of the City of Elkins will have its final reading and vote on the ordinance on Thursday, November 9, 2006, at 7:00 p.m. in the City Council Chambers, 401 Davis Avenue, Elkins, West Virginia. The meeting will be open to the public and any interested parties may appear at the meeting and present protests, if any, with respect to the proposed Ordinance.

A copy of the proposed ordinance is available for public inspection at the offices of the City Clerk of the City of Elkins, 401 Davis Avenue, Elkins, West Virginia.

CITY OF ELKINS

10-7, 21, 28

I, Donald W. Smith, General Manager of THE INTER-MOUNTAIN, a newspaper published at Elkins, in said county, do hereby certify that the annexed advertisement was published on the following dates:

Oct 7 Oct 21 Oct 28 _____

20 06 as required by law.

Given under my hand this 28th day of Oct 20 06

Donald Smith
General Manager

Printer's Fee: $ 127.15

Sub ne this 28th day of October, 20 06

Shirley A Meneau
Notary Public

My 15th day of April, 20 12

AN ORDINANCE TO AMEND AND REENACT THE RATES, RULES AND REGULATIONS FOR FURNISHING SEWAGE AND SEWAGE DISPOSAL SERVICE AT ELKINS AND VICINITY, RANDOLPH COUNTY, WEST VIRGINIA BY INCREASING THE RATES CHARGED THEREFORE IN SCHEDULE NOS. 1, 2, 3 AND 4 OF THE SCHEDULE OF RATES

ORDINANCE NUMBER 057

WHEREAS, Chapter 24, Article 2, Section 4 (b) of the West Virginia Code, effective July 1, 1981, as amended, gives to municipally operated public utilities the approval authority to set their own rates and charges, and;

WHEREAS, on February 6, 2006, the Common Council of the City of Elkins adopted an Ordinance increasing it rates for furnishing sewage and sewage disposal service in two phases in order to provide sufficient revenues to amortize the cost of capital improvements to its sewer system mandated by regulators and to provide working capital to pay the expenses of operations; and

WHEREAS, upon the filing of protests to the increased rates adopted February 6, 2006, the Public Service Commission established a proceeding for review of the City's increased sewer rates; and,

WHEREAS, the Public Service Commission of West Virginia, by a Final Order dated July 11, 2006, in Case No. 06-0209-S-MA, approved a two-step increase in the City's sewer rates based upon the Commission Staff's recommended revenue requirements and rate design; and

WHEREAS, step one of the Public Service Commission-approved sewer rates became effective July 21, 2006; and

WHEREAS, step two of the Public Service Commission-approved rates, designed to cover the increased debt service and operation and maintenance expenses associated with the City's sewer improvement construction project, and are not to become effective until issuance of a certificate of substantial completion of the improvement project; and

WHEREAS, bids received on the City's sewer improvement construction project are higher than those initially anticipated, resulting in an increase in the project cost; and

WHEREAS, in order to meet the increased cost of the sewer improvement project resulting from the higher bids, the Common Council of the City of Elkins deems it necessary to increase the rates and charges for the furnishing of services to treat and dispose of sewerage, said rates to become effective upon issuance of a certificate of substantial completion of the improvement project.

THEREFORE: THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA HEREBY ORDAINS:

The following rates, fees and charges for sewer service provided by it to customers throughout its territory served, are hereby fixed and determined as rates, fees and charges to be charged in lieu of those step two rates, fees and charges previously approved by the Public Service Commission of West Virginia in Case No. 06-0209-S-MA to become effective upon completion of the sewer improvement project.

THE FOLLOWING RATES ARE TO BECOME EFFECTIVE AFTER ISSUANCE OF CERTIFICATE OF SUBSTANTIAL COMPLETION OF SEWER IMPROVEMENT PROJECT

APPROVED IN PSC CASE NO. 06-0079-S-CN

SECTION ONE – RATES, RULES AND REGULATIONS

SCHEDULE NUMBER 1

APPLICABILITY

Applicable to entire territory served.

AVAILABILITY OF SERVICE

Available for domestic, commercial, and industrial sewer service

RATES

First 750,000 gallons used per quarter - $7.07 per 1,000 gallons.
Over 750,000 gallons used per quarter - $2.81 per 1,000 gallons.

MINIMUM CHARGE

No bill shall be rendered for less than $42.42 per quarter based upon 6,000 gallons treated.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, within twenty (20) days of the date of 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.

MONTHLY OR BI-MONTHLY PAYMENT BILLINGS

The above rates and charges may be adjusted to a monthly or bi-monthly basis, providing the adjustment results in no lower charges.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility or up to a maximum of $25.00 will be imposed upon any customer whose check for payment is returned by the bank due to insufficient funds.

TAP FEE

The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of $400.00 will be charged to customers applying for service outside of a certificate proceeding before the Commission for each new tap to the system.

LEAK ADJUSTMENT

$0.46 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

SCHEDULE NUMBER 2

APPLICABILITY

Applicable to Tasbery Hills Subdivision.

AVAILABILITY OF SERVICE

Available for domestic service in un-metered housing projects or subdivisions.

FLAT RATE (Customers with non-metered water supply)

No bill shall be rendered for less than $95.45 per quarter.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full within twenty (20) days of the date of 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.

RETURNED CHECK CHARGE

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LEAK ADJUSTMENT

$0.46 per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

SCHEDULE NUMBER 3

APPLICABILITY

Applicable within and without the corporate limits of the City of Elkins.

AVAILABILITY OF SERVICE

Available to Mallory Public Service District.

METERED RATES - (Based on metered water sold)

$2.386 per M gallons

APPLICABILITY

Applicable within and without the corporate limits of the City of Elkins.

AVAILABILITY OF SERVICE

Available to City of Elkins for treatment of Backwash.

METERED RATES - (Based on metered water sold)

$1.582 per M gallons

SCHEDULE NUMBER 3A
INDUSTRIAL WASTE

APPLICABILITY

Applicable within and without the corporate limits of City of Elkins.

AVAILABILITY OF SERVICE

Applicable where sewer customer obtains water wholly or partly from a source other than the Municipal Water Works of the City of Elkins.

Sewer user shall make application in writing, showing type of waste to be delivered to the sanitary sewer system of the City of Elkins, and shall not deliver said waste until written permission has been given by the Sanitary Board of the City of Elkins.

Sewer user shall provide, at the end of each calendar quarter, to the Sanitary Board of the City of Elkins, an officially signed notification showing the approximate quantity in gallons of waste delivered to the sanitary sewer system of the City of Elkins. Upon receipt of such notification billing shall be made applying the rates in Schedule Number 1.

SCHEDULE NUMBER 4

APPLICABILITY

Applicable outside the corporate limits of the City of Elkins.

AVAILABILITY OF SERVICE

Available to Leadsville Public Service.

METERED RATES (Based on metered water sold)

$2.668 per M gallons

SECTION TWO – EFFECTIVE DATE

The Rates and Charges provided herein shall be effective after the issuance of a certificate of substantial completion of the sewer upgrade project approved by the Public Service Commission in Case No. 06-0079-S-CN, unless permitted to be placed into effect at an earlier date by Order of the Public Service Commission of West Virginia.

SECTION THREE – SEPARABILITY; REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are separable, and if any clause, provision or section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. Upon the effective date of the fees, rates and charges as herein set forth, all ordinance, resolutions, orders or part thereof in conflict with the provisions of this Ordinance are, to the extent that the provisions of this Ordinance do not touch upon the provisions of prior ordinances, resolutions, orders of parts thereof, the same shall remain in full force and effect.

SECTION FOUR – STATUTORY NOTICE AND PUBLIC HEARING

Upon introduction hereof, the City Clerk shall publish Notice of this Ordinance in The Inter-Mountain, being a newspaper published and of general circulation in Randolph County, West Virginia, as a Class II publication. The first publication shall be made at least ten (10) days prior to the date set for the public hearing on the ordinance and the second publication at least five (5) days before the meeting of the City Council at which a final reading and vote on the ordinance will be held. Said notice shall state that this Ordinance has been introduced, and that any person interested may appear before Council on the 9th day of November, 2006, at 7:00 p.m. and present protests, if any. At such hearing all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper on the premises.

Further, said Notice shall advise the public that a copy of this ordinance is available for public inspection.

10-7, 21, 28

PROPOSED MINUTES

PUBLIC HEARING AND SPECIAL COUNCIL MEETING OF NOVEMBER 9, 2006

Elkins City Council met for a public hearing and a special session in the council chamber of city hall at 7:03 p.m. Thursday, November 9, 2006. Present were: Mayor Judith Ann Guye; Councilpersons: R. N. Beckwith, J. S. Bibey, V. T. Broughton, T. P. Ditty, H. R. Elbon, T. Z. Hensil, C. L. Metheny and R. A. Woolwine; City Clerk P. J. Graziani, Jr., Police Captain J. E. Batdorf and City Attorney R. T. Busch. Council members R. J. Malcolm and K. L. Wilmoth, City Treasurer L. L. Crosston and Fire Chief T. W. Meader were absent.

PUBLIC HEARING

The mayor commenced a public hearing during which council members could receive and consider comments on Proposed Ordinance No. 057, amending the Sewer Rate Tariff. No person came forth to speak. The mayor closed the public hearing at 7:04 p.m.

UNFINISHED BUSINESS

Cm Elbon, seconded by Cm Hensil, **MOVED PROPOSED ORDINANCE 057, AMENDING AND REENACTING PHASE TWO OF THE PUBLIC SERVICE COMMISSION-APPROVED RATES FOR FURNISHING SEWAGE AND SEWAGE DISPOSAL SERVICE AT ELKINS AND VICINITY, BE BROUGHT FORTH, READ BY TITLE ONLY, AND PASSED ON THIRD AND FINAL READING.** A roll call being requested, the clerk read the roll:

Beckwith	-	No	Hensil	-	Yes
Bibey	-	Yes	Malcolm	-	Absent
Broughton	-	No	Metheny	-	Yes
Ditty	-	Yes	Wilmoth	-	Absent
Elbon	-	Yes	Woolwine	-	Yes

The motion carried.

The meeting adjourned at 7:06 p.m.

PROPOSED MINUTES

PUBLIC HEARING AND REGULAR COUNCIL MEETING OF OCTOBER 19, 2006

Elkins City Council met for a public hearing and a regular session in the council chamber of city hall at 7:01 p.m. Thursday, October 19, 2006. Present were: Mayor Judith Ann Guye; Councilpersons: R. N. Beckwith, J. S. Bibey, V. T. Broughton, T. P. Ditty, H. R. Elbon, T. Z. Hensil, R. J. Malcolm, C. L. Metheny, K. L. Wilmoth and R. A. Woolwine; City Clerk P. J. Graziani, Jr., City Treasurer L. L. Crosston, City Attorney R. T. Busch, Police Lieutenant H. R. White, III and Fire Chief T. W. Meader. Police Captain J. E. Batdorf was absent.

PUBLIC HEARING – SEWER RATE TARIFF

The mayor commenced a public hearing during which council members could receive and consider comments on Proposed Ordinance No. 057, amending the Sewer Rate Tariff. No person came forth to speak. The mayor closed the public hearing at 7:01 p.m.

AGENDA ADJUSTMENTS

1. Employee travel – three water fund employees to Morgantown for safety seminar training.
2. Building Permit Application No. 3124.

PUBLIC COMMENT

There was none.

CONSENT CALENDAR

Cm Metheny, seconded by Cm Bibey, **MOVED THAT COUNCIL ACCEPT THE MINUTES OF THE SPECIAL MEETING OF OCTOBER 3 AS PRESENTED;** however, the motion did not carry. [Councilmen Broughton and Beckwith contended that the minutes of the October 3 meeting should have reflected Cm Broughton's disagreement with a pronouncement of the presiding officer as to the conduct of the Public Comment portion of the meeting agenda. The presiding officer restricted interaction by individual council members with speakers making public comment to the full council. The clerk was instructed to insert a synopsis and submit the amended October 3 minutes for consideration at the meeting of November 2.]

UNFINISHED BUSINESS

Cm Elbon, seconded by Cm Malcolm, **MOVED PROPOSED ORDINANCE 057, AMENDING AND REENACTING PHASE TWO OF THE PUBLIC SERVICE COMMISSION-APPROVED RATES FOR FURNISHING SEWAGE AND SEWAGE DISPOSAL SERVICE AT ELKINS AND VICINITY, BE BROUGHT FORTH, READ BY TITLE ONLY, AND PASSED ON SECOND AND FINAL READING.** The motion carried.

The attorney had made available copies of the most current revision of the microwave tower lease agreement. The ad hoc committee was to meet after the council meeting to agree upon a final document the mayor could then execute.

NEW BUSINESS

Cw Wilmoth, seconded by Cm Hensil, **MOVED COUNCIL APPROVE EMPLOYEE TRAVEL, AS REFLECTED ON**

THE AGENDA. The motion carried. [Mike Barkley will travel to Morgantown for communications training; the municipal judges to Charleston for municipal court training and certification; two building officials to Sutton for WV Code officials training; and Patrolman Hebb to Flatwoods for Homeland Security Grant Program training.]

Cm Ditty, seconded by Cw Wilmoth, **MOVED THAT COUNCIL APPROVE CREATION OF THE NEW EMPLOYMENT POSITION OF *WATER WORKER I.*** The motion carried.

Cm Ditty, seconded by Cm Hensil, **MOVED THAT COUNCIL APPROVE CREATION AND FUNDING OF ONE ADDITIONAL PERMANENT EMPLOYMENT POSITION IN THE WATER TRANSMISSION AND DISTRIBUTION DEPARTMENT.** The motion carried. [The initial full-time hourly rate for the position will be $8.85. Assuming the position was filled for one-half of FY2007, the fully fringed six-month cost would exceed $15,000.]

Cw Wilmoth, seconded by Cm Hensil, **MOVED COUNCIL APPROVE THE REQUEST OF THE CHURCH OF GOD AND FAMILY WORSHIP CENTER TO TEMPORARILY CLOSE A PORTION OF 14TH STREET DURING ITS *HALLELUJAH HARVEST* CELEBRATION.** The motion carried.

Cm Beckwith, seconded by Cm Metheny, **MOVED COUNCIL APPROVE THE REQUEST OF THE ELKINS HIGH SCHOOL 9TH GRADE FOR A POLICE ESCORT DURING THE HOMECOMING PARADE.** The motion carried.

Cm Metheny, seconded by Cm Broughton, **MOVED COUNCIL APPROVE THE REQUEST OF THE DOWNTOWN MERCHANT'S ASSOCIATION TO TEMPORARILY CLOSE A PORTION OF 3RD STREET DURING HALLOWEEN-RELATED ACTIVITIES.** The motion carried.

Cm Elbon, seconded by Cm Metheny, **MOVED COUNCIL AUTHORIZE THE MAYOR TO EXECUTE ANY AND ALL DOCUMENTATION RELEVANT TO THE PLANNING, DESIGN, ACQUISITION, INSTALLATION, BETTERMENT, IMPROVEMENT AND/OR FINANCING OF CLIENT-SERVER BASED FINANCIAL MANAGEMENT, UTILITY BILLING AND OTHER SOFTWARE OF AFFILIATED COMPUTER SERVICES, INC. (ACS) AS INITIALLY QUOTED JUNE 12, 2006.** The motion carried.

Cm Elbon, seconded by Cm Hensil, **MOVED COUNCIL AUTHORIZE THE MAYOR, UPON FINAL APPROVAL OF THE AD HOC COMMITTEE, TO EXECUTE ANY AND ALL DOCUMENTATION RELEVANT TO THE ACQUISITION, INSTALLATION, BETTERMENT, IMPROVEMENT AND/OR FINANCING OF PERSONAL COMPUTERS AT A COST NOT TO EXCEED FORTY THOUSAND ($40,000.00) DOLLARS.** The motion carried.

Cm Hensil, seconded by Cm Metheny, **MOVED PROPOSED ORDINANCE 058, VACATING AND ABANDONING A PARTIAL ALLEY RIGHT-OF-WAY ON 6TH STREET, BE BROUGHT FORTH, READ BY TITLE ONLY AND PASSED ON FIRST READING.** The motion carried.

Cm Woolwine, seconded by Cm Hensil, **MOVED COUNCIL ADOPT PROPOSED RESOLUTION 072, DEALING WITH THE CONTROL OF CATS AND DOGS.** The motion carried.

Cm Beckwith, seconded by Cm Woolwine, **MOVED COUNCIL AUTHORIZE THE MAYOR TO EXECUTE A SUPPLEMENTAL AGREEMENT WITH WEST VIRGINIA DEPARTMENT OF TRANSPORTATION TO OBTAIN ADDITIONAL LOCAL-MATCH FUNDING FOR THE LOWER GLENDALE PEDESTRIAN BRIDGE PROJECT.** The motion carried. [The State Project Number is U342-Elk/in-2.00, and the Federal Project Number is TEA-OH22(001)E, Randolph County. Terms of the supplemental agreement provide for additional Department of Transportation funding of $176,000 and obligates the city to provide an additional $35,200 of local match. The Parks and Recreation Commission will be responsible for the local match requirement of the grant. As a result of the action, total project cost was increased to $428,200 and local match requirement to $50,440. Contractor bids in excess of the engineer's estimate of cost and costs related to handicapped access were responsible for the increased funding requirements.]

COMMITTEE REPORTS

BUILDING

The Committee received 3 building permit applications since the last meeting of council, 3122 thru 3124. Acting upon recommendation of the building inspector, the Committee approved all applications.

Cm Malcolm, seconded by Cm Beckwith, **MOVED THAT COUNCIL GRANT THE 3 PERMIT APPLICATIONS APPROVED BY THE COMMITTEE.** The motion carried.

PARKS

Cm Beckwith said new playground equipment will be installed by the end of October.

Pedestrian bridge pillars should be set in place before winter. The bridge itself should be completed and in operation by the spring of 2007.

The police department was commended for its efforts to make officers more visible in the various parks. The initiative has resulted in enhanced security. The same comments were expressed about visible police presence during the Forest Festival.

Cm Broughton commented on efforts of a recently formed group of teenagers and adults seeking to obtain a site for the use of skateboarders.

Cm Beckwith opined that vendors in the city park during the Forest Festival should offer goods complimentary to the theme of the event.

In response to an inquiry from Cm Ditty, Cm Beckwith said utilization priorities have not yet been finalized to allow for the allocation of available space in Lower Glendale Bottom.

PERSONNEL

Cw Wilmoth said interviews had been scheduled for the week of October 30 for operations manager applicants.

STREETS

Cm Hensil reported that the 10th Street Storm Water Separation Project was underway.

WATER

Cm Ditty announced that the 'listeners' (devices to indicate leakage in water transmission and distribution lines) had been installed and were in operation.

The mayor reported on a visit that she and some council members made of the site of the Upper Tygart Valley Watershed Partnership's impoundment project on Elkwater.

OTHER BUSINESS

Cm Beckwith discussed actions of the Enforcement Agency relevant to the structure at 107 Graham Street.

Mayor Guye said she had attended an initial meeting with the mayors of Buckhannon and Weston in an effort to identify areas where cooperation could be promoted between the jurisdictions.

The meeting adjourned at 8:25 p.m.

PROPOSED MINUTES

SPECIAL COUNCIL MEETING OF OCTOBER 3, 2006

Elkins City Council met in special session in the council chamber of city hall at 7:00 p.m. Thursday, October 3, 2006. Present were: Mayor Judith Ann Guye; Councilpersons: R. N. Beckwith, J. S. Bibey, V. T. Broughton, T. P. Ditty, H. R. Elbon, T. Z. Hensil, R. J. Malcolm, C. L. Metheny, K. L. Wilmoth and R. A. Woolwine; City Clerk P. J. Graziani, Jr., City Treasurer L. L. Crosston, City Attorney R. T. Busch, Police Captain J. E. Batdorf and Fire Chief T. W. Meader.

AGENDA ADJUSTMENTS

There were none.

PUBLIC COMMENT

In her capacity as presiding officer, Mayor Guye expressed the policy she intended to implement relative to the Public Comment portion of council meetings. She asked that members listen to what citizens had to say without engaging in dialogue with or cross-questioning of the speaker. Additionally, she directed that council members be recognized by the chair before commenting upon their own interpretation of any report of, or comments offered by, another council member. Councilman Broughton took exception with the mayor's pronouncements, saying his personal feeling was that his constitutional right of free speech would be curtailed by adherence thereto.

Making reference to his September 21 comments concerning operations of the railroad depot building welcome center, Ed Griesel said his ownership of stock in the excursion railroad company was irrelevant to his involvement in the welcome center. Since the welcome center is not affiliated with the excursion railroad, there was no conflict of interest.

Dave Rao, 909½ S. Henry Avenue, made reference to an appearance he made at a September 21 executive session of city council. Subsequent to that appearance, the city attorney informed him by letter that a complaint he previously filed had been forwarded to the WV State Police for investigation. He intimated that one or more city officials were guilty of failure to perform official duties, as required by WV Code. Lastly, he said he was entitled to equal protection under the law.

CONSENT CALENDAR

Cm Woolwine, seconded by Cm Beckwith, **MOVED THAT COUNCIL ACCEPT THE MINUTES OF THE REGULAR MEETING OF SEPTEMBER 7, 2006 AS PRESENTED.** The motion carried.

UNFINISHED BUSINESS

There was none.

NEW BUSINESS

Cm Elbon, seconded by Cm Hensil, **MOVED PROPOSED ORDINANCE 057, AMENDING AND REENACTING PHASE TWO OF THE PUBLIC SERVICE COMMISSION-APPROVED RATES FOR FURNISHING SEWAGE AND SEWAGE DISPOSAL SERVICE AT ELKINS AND VICINITY, BE BROUGHT FORTH, READ BY TITLE ONLY, AND PASSED ON FIRST READING.** A roll call being requested, the clerk read the roll:

Beckwith	-	No	Hensil	-	Yes
Bibey	-	Yes	Malcolm	-	Yes
Broughton	-	No	Metheny	-	Yes
Ditty	-	Yes	Wilmoth	-	Yes
Elbon	-	Yes	Woolwine	-	Yes

The motion carried. [Phase Two rates could be implemented in early 2008, upon certification of substantial completion of the project to upgrade the capacity of the wastewater treatment plant. The low contractor bid opened September 13 exceeded the engineers' estimate of cost by approximately $1.5 million. Proposed Ordinance 057 increases Phase Two rates in an amount sufficient to amortize the additional indebtedness, an increase of approximately a 5.8% increase.]

Cm Beckwith, seconded by Cm Bibey, **MOVED THAT COUNCIL APPOINT RANDALL BILLER TO THE ELKINS SANITARY BOARD FOR A THREE-YEAR TERM TO EXPIRE DECEMBER 31, 2008.** The motion carried.

Cm Hensil, seconded by Cm Malcolm, **MOVED THAT COUNCIL APPOINT DAVID L. ICE TO THE ELKINS SANITARY BOARD FOR A THREE-YEAR TERM TO EXPIRE DECEMBER 31, 2007.** The motion carried.

Cw Wilmoth, seconded by Cm Bibey, **MOVED COUNCIL APPROVE EMPLOYEE TRAVEL, AS REFLECTED ON THE AGENDA.** The motion carried.

Cm Ditty, seconded by Cw Wilmoth, **MOVED COUNCIL AUTHORIZE THE MAYOR TO EXECUTE DOCUMENTS NECESSARY TO ACCEPT A *ZEEWEED 1000 MEMBRANE TECHNOLOGY PILOT-SCALE DEMONSTRATION PROPOSAL*.** The motion carried. [The Zeeweed unit will be the third microfiltration system evaluated.]

COMMITTEE REPORTS

BUILDING

Building Permit Application 3079 was previously disapproved, because the construction proposed would have violated setback provisions of zoning law. However, upon appeal to the board of zoning appeal, a variance was granted.

Cm Malcolm, seconded by Cm Hensil, **MOVED COUNCIL GRANT BUILDING PERMIT APPLICATION 3079, SINCE THE BOARD OF ZONING APPEALS GRANTED A VARIANCE.** The motion carried.

The Committee received 10 building permit applications since the last meeting of council, 3112 thru 3121. Acting upon recommendation of the building inspector, the Committee approved all applications.

Cm Malcolm, seconded by Cm Metheny, **MOVED THAT COUNCIL GRANT THE 10 PERMIT APPLICATIONS APPROVED BY THE COMMITTEE.** The motion carried.

MUNICIPAL PROPERTY

Cm Metheny reported that repair parts for the fire department boiler were on order.

OTHER BUSINESS

Cm Broughton commended Ed Griesel on operations of the train depot welcome center.

Cm Beckwith said his vote against the rate tariff ordinance, necessary to obtain funding for the wastewater treatment plant upgrade project, did not mean that he was against the upgrade project itself.

The meeting adjourned at 7:25 p.m.

State of West Virginia, County of Randolph, ss.

I, Donald W. Smith, General Manager of THE INTER-MOUNTAIN, a newspaper published at Elkins, in said county, do hereby certify that the annexed advertisement was published on the following dates:

March 7 March 14 _____ _____

20 08 as required by law.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LISA A. JONES
RR 3, BOX 62
PARSONS, WV 26287
My commission expires March 15, 2017

Given under my hand this 14th day of March 20,08

Donald Smith
General Manager

Printer's Fee: $ 136.90

Subscribed and sworn to before me this 14th day of March, 20, 08.

Lisa A. Jones
Notary Public

My Commission Expires the 15th day of March, 20 17.

NOTICE OF PUBLIC HEARING ON THE CITY OF ELKINS BOND ORDINANCE

A public hearing will be held on the following-entitled Ordinance at a regular meeting of the Council of The City of Elkins (the "City"), to be held on Thursday, March 20, 2008, at 7:00 p.m. at The City of Elkins, City Hall, 401 Davis Avenue, Elkins, West Virginia, and at such hearing any person interested may appear before the City and present protests, and all protests and suggestions shall be heard by the City and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF ELKINS AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $650,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2008 A; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The above-quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The City contemplates the issuance of the Bonds described in the Ordinance. The proceeds of the Bonds will be used to provide financing of the costs of acquisition and construction of certain additions, betterments and improvements to the municipal sewer system of the City of Elkins and to pay certain costs of issuance of the Bonds and related costs. The Bonds are payable solely from revenues to be derived from the ownership and operation of the system of the City. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

The above-entitled Ordinance was adopted by the Council of The City of Elkins on March 6, 2008. A certified copy of the above-entitled Ordinance is on file with the City for review by interested parties during regular office hours.

Following the public hearing, the City intends to enact the Ordinance upon final reading.

Dated: March 6, 2008

/s/ Judy Guye
Mayor

3-7 14

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 2008 A
(The Huntington National Bank)

EXCERPT OF MINUTES ON ADOPTION OF
SUPPLEMENTAL RESOLUTION

The undersigned City Clerk of The City of Elkins (the "City") hereby certifies that the following is a true and correct excerpt of the minutes of a regular meeting of the said City:

*** *** ***

The Council of the City met in regular session, pursuant to notice duly posted, on the 15th day of May, 2008, in Elkins, West Virginia, at the hour of 7:00 p.m.

PRESENT:	Judith Ann Guye	Mayor
	Robert N. Beckwith	Councilmember
	James S. Bibey	Councilmember
	Thomas Z. Hensil	Councilmember
	Carman L. Metheny	Councilmember
	Karen L. Wilmoth	Councilmember
	Van T. Broughton	Councilmember
	Hazel K. Burford	Councilmember
	Robert J. Malcolm	Councilmember
	Irvin D. Talbott, Jr.	Councilmember
	Robert A. Woolwine	Councilmember
	Philip J. Grazianni, Jr.	City Clerk

ABSENT: None.

Judy Guye, Mayor, presided, and Philip J. Graziani, Jr., acted as City Clerk. The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it.

The Mayor presented a proposed Supplemental Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2008 A OF THE CITY OF ELKINS; AND THE SALE AND DELIVERY OF SUCH BONDS TO THE HUNTINGTON

NATIONAL BANK; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; GRANTING AUTHORITY TO SANITARY BOARD TO APPROVE REMAINING DRAWS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Thereupon, upon motion duly made and seconded, it was unanimously ordered that the said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

The Mayor presented a proposed resolution for the payment of invoices and caused the same to be read and there was discussion. Thereupon, upon motion duly made and seconded, to approve the resolution.

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of The City of Elkins and that such actions remain in full force and effect and have not been amended, rescinded, superseded, repealed or changed.

WITNESS my signature on this 16th day of May, 2008.

Philip J. Grozzoni

City Clerk

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PROPOSED MINUTES
REGULAR COUNCIL MEETING OF FEBRUARY 21, 2008

Elkins City Council met in regular session in the council chamber of city hall at 7:10 p.m. Thursday, February 21, 2008. Present were Mayor Judith A. Guye; Councilpersons: R. N. Beckwith, J. S. Bibey, H. K. Burford, T. Z. Hensil, R. J. Malcolm, C. L. Metheny, D. G. Satterfield, I. D. Talbott, Jr., and R. A. Woolwine; City Clerk P. J. Graziani, Jr., City Treasurer L. L. Crosston, City Attorney R. T. Busch, Police Captain J. E. Batdorf and Fire Chief T. W. Meader. Councilwoman K. L. Wilmoth was absent.

The meeting commenced with an invocation and the Pledge of Allegiance.

AGENDA ADJUSTMENTS

There were none.

PUBLIC COMMENT

Roy Teter, 119 South Gate Road, said he wanted to establish a park-like or green space setting on the riverbank between the railroad bridge and swinging bridge on Wilson Street. Additionally, he conceived extending the bike trail to Riverbend Park. He said the reaction of the Elkins Parks and Recreation Commission to his proposal that a park be established was not favorable. The Randolph County Development Authority's Jennifer Giovanetti told him he could clean up trash and litter on the property and mow the grass. The Authority, he said, would not allow him to cut briars on the riverbank, improve the land or expand the area available by the placement of fill dirt. Members of the Seventh Day Adventist Church would be willing to help clean the riverbank of debris but could not access it unless the briars and undergrowth were removed. He encouraged the members to view the riverbank from midway across the swinging bridge. "It's a cesspool," he said. Mr. Teter asked that the members exert whatever influence possible to advance his conception.

Billy Canfield, 108 Davis Street, commented on increased city spending and mentioned recently enacted user fee and tax increases. He said before the city considered pay raises or contributions to outside organizations it should be aware of cost cutting measures recently implemented by Wal-Mart and Davis and Elkins College. He said, "Put a string on the budget."

CONSENT CALENDAR

Cm Beckwith, seconded by Cm Metheny, MOVED THAT COUNCIL ACCEPT THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 7, 2008 AS PRESENTED. The motion carried.

UNFINISHED BUSINESS

No action was taken on Proposed Ordinance 072, establishing regulation of city trees.

NEW BUSINESS

Cm Talbott, seconded by Cw Burford, MOVED THAT COUNCIL ADOPT PROPOSED RESOLUTION 103, APPROVING INVOICES RELATING TO THE PROPOSED WATER PROJECT AND AUTHORIZING DRAWDOWN NUMBER 4 THEREOF FROM FUNDS AVAILABLE FROM THE WATERWORKS SYSTEM DESIGN BOND ANTICIPATION NOTES, SERIES 2007. The motion carried. [Chapman Technical Group will be paid $25,920.59.]

Cm Talbott, seconded by Cm Bibey, MOVED THAT COUNCIL ADOPT PROPOSED RESOLUTION 104, APPROVING INVOICES RELATING TO THE ONGOING OPERATIONS OF THE WATER FUND AND AUTHORIZING PAYMENT DRAWDOWN NO. 2 THEREOF FROM FUNDS AVAILABLE THROUGH A HUNTINGTON NATIONAL BANK LINE OF CREDIT. The motion carried. [CAS Structural Engineering, Inc. will be paid $962.78 and Huntington National Bank $500.00.]

Cm Beckwith, seconded by Cm Bibey, MOVED COUNCIL APPOINT T. RICHARD HARVEY TO THE PARKS AND RECREATION COMMISSION FOR A 6-YEAR TERM TO COMMENCE MARCH 1, 2008. The motion carried.

Cm Malcolm, seconded by Cm Hensil, MOVED THAT PROPOSED ORDINANCE 073, PROVIDING FOR THE ISSUANCE OF NOT MORE THAN $650,000 OF SEWER REVENUE BONDS, SERIES 2008A, BE BROUGHT FORTH, READ BY TITLE ONLY AND PASSED ON FIRST READING. The motion carried.

Cm Beckwith, seconded by Cm Talbott, MOVED THAT COUNCIL APPROVE THE EMPLOYEE TRAVEL REFLECTED ON THE AGENDA. The motion carried. [Two water employees will attend WV Rural Water Association training in Clarksburg.]

COMMITTEE REPORTS

BUILDING

The Committee received 4 building permit applications since the last meeting of council, 3553 thru 3556. Acting upon recommendation of the building inspector, the Committee approved all applications.

Cm Malcolm, seconded by Cm Metheny, MOVED THAT COUNCIL GRANT BUILDING PERMITS FOR THE 4 APPLICATIONS APPROVED BY THE COMMITTEE. The motion carried.

PERMIT	APPLICANT	LOCATION	DESCRIPTION	VALUE
3553	Johnson, Beverly	121 Barron Av	Remodel bathroom	$5,500
3554	Hyre, Dr. Clifton	115 Wilton Av	Replace windows, closet	$2,400
3555	Shiloh Baptist Church	Fifth St	Siding, soffit, fascia, gutters & downspouts	$30,000
3556	Iseli, Kerri	504 Central St	Replace windows	$5,000

FINANCE

Some outside organizations to be funded in Fiscal Year 08/09 will appear at the regular council meeting of March 6 to present information about their program offerings and be available for council member's questions.

MUNICIPAL PROPERTY

A Johns Manville Roofing representative will visit Elkins to inspect perceived defects in city hall's roofing membrane.

RULES AND ORDINANCE

The Committee's regular recurring meeting time was changed to 4 p.m. on the first Tuesday of each month.

Youth Empowered Solutions (Y.E.S.) asked the city for permission to store skateboard-related equipment to be donated by Snowshoe Mountain Resort in the 11th Street garage after street department personnel move to the Baxter Street garage. The equipment would be stored until the skatepark site in Glendale Park is ready for use. The attorney suggested that Y.E.S. personnel execute waivers if liability holding the city harmless for accidents or injury while on city property. Underage personnel would also have to obtain parental signatures on liability waiver forms. Adult supervision would be required at all times. City personnel and equipment might be available for offloading and movement of equipment and fixtures and placement in the garage facility.

PARKS

Cm Beckwith said it would be necessary to remove a couple of trees in the downtown park during the coming season.

The 2008 Easter Egg Hunt will be cosponsored by WDNE Radio.

RULES AND ORDINANCE

The proposed tree ordinance will undergo substantial revision before being recommended for council's consideration.

SANITATION/LANDFILL

Mayor Guye, Councilman Metheny and the city clerk traveled to Charleston to initiate discussion of obtaining funding from the Solid Waste Management Board for the new landfill liner project.

Operations at the landfill have been going well, Cm Metheny said.

The WV Code Chapter 5G process that will result in the selection of an engineer to design and oversee construction of a new lined solid waste disposal cell at the landfill continues. Initial interviews of respondents have been completed. Three firms will be invited to submit proposals for design and execution of the project. The Committee will then formulate a recommendation for council's consideration. Once the engineer is appointed by council, design, financing and construction will follow.

STREETS

Acknowledging the pothole problem caused by winter weather, Cm Hensil said patching would take place only when hot melt asphalt was available. Cold patch repairs were not durable.

Street department personnel will soon occupy the new Baxter Street facility. Cm Malcolm suggested thought be given to painting the lower portions of the metal shell of the building as a preventative against rusting.

Mayor Guye suggested an invitation could be extended to the Chamber of Commerce to use the newly renovated building as a venue for a future Chamber After Hours event, providing its membership and the community in general the opportunity of seeing the use to which the tax dollars had been put.

OTHER BUSINESS

Fire Chief Tom Meader was appointed to head the city's Safety Committee, the mayor announced. Cm Beckwith suggested that a finalized safety policy could be made part of the city's personnel policy.

Substantial discussion of a windmill farm proposed for Laurel Mountain resulted in the determination by majority of the members to oppose the project. The city attorney was asked to draft a resolution of opposition for consideration at a future meeting.

The mayor said sanitary sewer lift stations and combined sewer overflows would be major topics of discussion, now that the upgrade of the wastewater treatment plant was nearing completion.

The meeting adjourned at 8:24 p.m.

/s/ Judith A. Guye, Mayor
/s/ Philip J. Graziani, City Clerk

PROPOSED MINUTES
REGULAR COUNCIL MEETING OF MARCH 6, 2008

Elkins City Council met in regular session in the council chamber of city hall at 7:06 p.m. Thursday, March 6, 2008. Present were Mayor Judith A. Guye; Councilpersons: R. N. Beckwith, J. S. Bibey, H. K. Burford, T. Z. Hensil, R. J. Malcolm, C. L. Metheny, D. G. Satterfield, I. D. Talbott, Jr., K. L. Wilmoth and R. A. Woolwine; City Clerk P. J. Graziani, Jr., City Treasurer L. L. Crosston, City Attorney R. C. Chenoweth, Police Captain J. E. Batdorf and Fire Chief T. W. Meader. City Attorney R. T. Busch was absent.

The meeting commenced with an invocation and the Pledge of Allegiance.

AGENDA ADJUSTMENTS

1. Recommendation that the landfill rate tariff be revised.
2. Authorization for Youth Empowered Solutions to utilize storage space at the 11th Street garage facility.
3. Removal from consideration of Proposed Resolution 107.

BUDGET CYCLE INFORMATIONAL PRESENTATIONS

1. Executive Director Elizabeth R. 'Beth' King presented information about the mission and activities of the Randolph County Arts Center. The stated mission of the Center is "To enhance the cultural and economic life of our region by providing facilities and arts programming that will entertain, educate, and inspire all of our citizens." On the Center's behalf, she asked for continued funding in the next fiscal year.

2. Ed Griesel discussed the various initiatives undertaken by the Depot Welcome Center. He said the Center's purpose was to greet, welcome and guide visitors to our community. Brochures, maps and other informational materials were provided to enhance the visitor's experience and induce a longer stay in the area. Currently staffed by volunteers 4 days per week, a 7-day operating schedule has been set as a goal. Many of the operating supplies and a computer have been donated, but there are hard dollar costs that must be met. Saying the Center was ideally situated to the excursion train, the music theater and the downtown area, Griesel asked for continued funding at a level of $9,200.

3. Harold Langevin appeared on behalf of The Helping Hand Clearinghouse, Inc. The organization has no funds of its own to distribute; instead, it attempts to assist those in need by referral to other organizations that do provide assistance (i.e., Catholic Community Services, Salvation Army, FEMA, United Way, etc.) Available funds do not go to needy individuals; instead, providers are paid directly (utility companies, landlords, etc.) The Clearinghouse does maintain a food pantry and stock of clothing. Langevin asked for any assistance that might be available.

WIND POWER INFORMATIONAL PRESENTATION

Joel Martin, Barbour County resident and spokesman for the West Virginia Green Energy Alliance, spoke in support for the windmill farm proposed by AES Laurel Mountain, LLC. Martin's comments were supported and elaborated upon by AES Development Manager Barry Sweitzer. Among the benefits to be realized from the project, they said, were temporary construction and permanent maintenance jobs; increased real estate and personal property tax revenues; an alternative energy source to lessen dependence on imported oil; new land lease and royalty revenues for affected property owners; and the potential for reduced pollution resulting from carbon-based fuel.

PUBLIC COMMENT

Speakers against the windmill project included Arthur and Pamela Dodds, on behalf of the Laurel Mountain Preservation Association, Joe Sabatino, Heather Biola, Norman Arbogast, Vicki Alfano, Sue Likens, and Larry Tampas. Among issues cited by opponents of the project were negative impact on the local viewshed, existing landforms and ridgelines; damage that could result from earthmoving, grading, clearing and access road installation; impact on aircraft flight patterns; decimation of bat and bird populations; noise pollution; rotating blade flicker; degradation of the quality of steam water that eventually feeds into the Mississippi and Potomac Rivers; that the environmental and ecological impact of the project's footprint was too big; that energy revenues generated would be exported, they won't stay in West Virginia; and the potential for diminished land values as a result of proximity to the windmills.

Justin Sandridge expressed the appreciation of Youth Empowered Solutions members for Council's consideration of making space available for the temporary storage of skatepark-related fixtures and equipment.

Roy Teter, 119 South Gate Road, again said he was concerned that the Randolph County Development Authority would not cleanup the riverbank between the railroad bridge and swinging bridge on Wilson Street. He said it was an eyesore.

Vicki Aucremanne, 110 Henry Avenue, said consideration should now be given to regulation of dangerous, free-roaming dogs, so that she and her little dogs would be safe.

CONSENT CALENDAR

Cm Metheny, seconded by Cm Bibey, MOVED THAT COUNCIL ACCEPT THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 21, 2008 AS CORRECTED. The motion carried. [Cw Wilmoth did not attend the meeting of February 21; however, the minutes originally presented incorrectly indicated that she was involved with putting forth two different motions. The errors were corrected, before the approved minutes were made of public record.]

UNFINISHED BUSINESS

No action was taken on Proposed Ordinance 072, establishing regulation of city trees.

Cm Malcolm, seconded by Cm Hensil, MOVED THAT PROPOSED ORDINANCE 073, PROVIDING FOR THE ISSUANCE OF NOT MORE THAN $650,000 OF SEWER REVENUE BONDS, SERIES 2008A, BE BROUGHT FORTH, READ BY TITLE ONLY AND PASSED ON SECOND READING. The motion carried.

NEW BUSINESS

Cm Metheny, seconded by Cm Talbott, MOVED THAT COUNCIL ADOPT PROPOSED RESOLUTION 105, AUTHORIZING APPLICATION FOR COMMUNITY PARTICIPATION PROGRAM GRANT FUNDS FOR THE BENEFIT OF THE ELKINS-RANDOLPH COUNTY YMCA. The motion carried. [$17,000 could be available for improvements to the exercise facility, pursuant to Project Number 08CPGP0137.]

Cm Beckwith, seconded by Cm Malcolm, MOVED THAT COUNCIL ADOPT PROPOSED RESOLUTION 106, AUTHORIZING APPLICATION FOR COMMUNITY PARTICIPATION PROGRAM GRANT FUNDS FOR THE BENEFIT OF THE ELKINS PARKS AND RECREATION COMMISSION. The motion carried. [$5,000 could be available for parks improvements, pursuant to Project Number 08LEDA0400.]

Consideration of Proposed Resolution 107, expressing Council's position concerning the proposed Laurel Mountain windmill farm project, was deferred to a later meeting.

Cm Talbott, seconded by Cm Hensil, MOVED THAT COUNCIL ADOPT PROPOSED RESOLUTION 108, APPROVING INVOICES RELATING TO THE PROPOSED WATER PROJECT AND AUTHORIZING DRAWDOWN NUMBER 5 THEREOF FROM FUNDS AVAILABLE FROM THE WATERWORKS SYSTEM DESIGN BOND ANTICIPATION NOTES, SERIES 2007. The motion carried. [Chapman Technical Group will be paid $36,875.00.]

Cm Hensil, seconded by Cm Talbott, MOVED THAT COUNCIL ADOPT PROPOSED RESOLUTION 109, APPROVING INVOICES RELATING TO THE ONGOING OPERATIONS OF THE WATER FUND AND AUTHORIZING PAYMENT DRAWDOWN NO. 3 THEREOF FROM FUNDS AVAILABLE THROUGH A HUNTINGTON NATIONAL BANK LINE OF CREDIT. The motion carried. [City of Elkins Water Fund will be reimbursed for payments made from its operating revenues to vendors effecting emergency repairs to water treatment plant Filter No. 4. FIMCO, LLC was paid $15,589.00 for filter media-related services and product; Concrete Preservation Systems, Inc. was paid $162,278.00 for repair of the filter.]

Cw Wilmoth, seconded by Cm Metheny, MOVED THAT COUNCIL APPROVE THE EMPLOYEE TRAVEL REFLECTED ON THE AGENDA. The motion carried. [Various operational employees will make a day trip to Charleston for the WV Construction and Design Exposition; four water employees will also attend the Exposition; however, they will stay over one night to attend instructional seminars; the street department assistant supervisor will travel to Wheeling for the 16th Annual Roadway Management Conference, a 3-day event.]

Cw Wilmoth, seconded by Cm Talbott, MOVED COUNCIL GRANT THE REQUEST OF GIRLS ON THE RUN TO PERFORM A 5K WALK/RUN. The motion carried. [A police escort will be provided, Captain Batdorf said.]

Cw Burford, seconded by Cm Hensil, MOVED THAT PROPOSED ORDINANCE 074, ESTABLISHING A MANDATORY MUNICIPAL COURT FEE ASSESSMENT FOR PURPOSES OF FUNDING THE RANDOLPH COUNTY TEEN COURT PROGRAM BE BROUGHT FORTH, READ BY TITLE ONLY, AND PASSED ON FIRST READING. The motion carried.

Cm Satterfield, seconded by Cm Beckwith, MOVED COUNCIL AUTHORIZE YOUTH EMPOWERED SOLUTIONS TO TEMPORARILY USE THE 11TH STREET GARAGE FOR THE STORAGE OF SKATEPARK-RELATED EQUIPMENT AND FIXTURES SUBJECT TO CONDITIONS TO BE DEFINED BY THE CITY ATTORNEY. The motion carried.

COMMITTEE REPORTS

BUILDING

The Committee received 7 building permit applications since the last meeting of council, 3557 thru 3563. Acting upon recommendation of the building inspector, the Committee approved all applications.

Cm Malcolm, seconded by Cm Metheny, MOVED THAT COUNCIL GRANT BUILDING PERMITS FOR THE 7 APPLICATIONS APPROVED BY THE COMMITTEE. The motion carried.

PERMIT	APPLICANT	LOCATION	DESCRIPTION	VALUE
3557	Schleer Builders	875 Industrial Park Rd	Storage shed	$2,900
3558	A & M Properties	Henry Av	Re-roof	$1,782
3559	Hackman, Thomas	201 Center St	Bathroom addition	$2,500
3560	Huntington Bank	Davis Av & Fifth St	Replace gas furnace and condensers	$12,450
3561	M & J Enterprises	Old Brick Playhouse	Repair 1/2 of roof (wind damage)	$21,923
3562	Anderson, Hope	115 Third St	Roof replacement	$6,090
3563	LeMasters, Kim	117 Riverview Dr	Replace windows and doors	$5,000

FINANCE

Members were provided with detailed financial information intended to help them better understand the General Fund budget preparation process for Fiscal Year 2008/2009. Historical revenue and expenditure information was provided to demonstrate the reasonableness of revenue and expenditures projections for the next fiscal year. Real estate valuations provided by the Randolph County Assessor underlay calculations of real estate and personal property tax revenue assumptions. A comprehensive compensation package was included, but it reflected no pay increase for the next fiscal year. Instead, it was recommended that raises be considered after receipt of the pay classification and compensation study currently under development. It was announced that the Committee would continue crafting a budget proposal at meetings to be held at 6 p.m. on March 11 and 18. Interested members were invited to attend. The Committee recommended that Other Postemployment Benefits (OPEB's) be funded over a period of 4 years. Funds would be appropriated at 25% of the estimated liability in FY 08/09. One hundred percent funding was projected for FY 11/12. All appropriated funds would be disbursed monthly and escrowed with the WV State Treasurer until payment of the outstanding liability was mandated by the State.

RULES AND ORDINANCE

The tree ordinance was being revised.

Cw Burford said money was spent on the Vision 2010 initiative, and one of its aims was increased tourism. Every excursion train rider, she said, crosses the river and sees the trash in the river and on its banks. It needs to be cleaned up. Attractive green space areas along the river could be an asset. Cm Talbott said the area could be used for kayak launching.

LANDFILL

Cm Metheny said a membrane pilot plant would be tested for treatment of leachate.

The Committee asked that an ordinance be prepared to modify certain aspects of the landfill rate tariff.

WATER

Current financing assumptions indicate the possibility of a grant of $1 million and zero percent interest loan of $4 million for the water upgrade project.

PUBLIC SAFETY

Regional Jail fees for February were $3,637.50.

Captain Batdorf said an emergency staffing situation existed. He had only 1 part-time and 5 full-time officers to fill the duty roster. Patrolman Judy had been called up for military training.

Randolph County Circuit Court mandated that arresting departments be responsible for transportation of offenders to holding facilities.

MUNICIPAL PROPERTY

Cm Satterfield said the warranty on the city hall roof membrane might be void. Damage to the membrane

appears to have been caused by termites; therefore, not eligible for warranty coverage.

OTHER BUSINESS

The meeting adjourned at 10:14 p.m.

/s/ Judith A. Guye, Mayor
/s/ Philip J. Graziani, City Clerk

PROPOSED MINUTES
REGULAR COUNCIL MEETING OF MARCH 20, 2008

Elkins City Council met in regular session in the council chamber of city hall at 7:08 p.m. Thursday, March 20, 2008. Present were Mayor Judith A. Guye; Councilpersons: R. N. Beckwith, J. S. Bibey, H. K. Burford, T. Z. Hensil, R. J. Malcolm, C. L. Metheny, D. G. Satterfield, I. D. Talbott, Jr., K. L. Wilmoth and R. A. Woolwine; City Clerk P. J. Graziani, Jr., City Attorney R. T. Busch, Police Captain J. E. Batdorf and Fire Chief T. W. Meader. City Treasurer L. L. Crosston was absent.

The meeting commenced with an invocation and the Pledge of Allegiance.

AGENDA ADJUSTMENTS

1. Authorization to execute a contract for installation of a new streetlight on Pole No. A2-933, on the 1700 block of S. Davis Avenue.

PUBLIC HEARING

Pursuant to legal advertisement published in the Inter-Mountain, the public was afforded opportunity to comment upon Proposed Ordinance 073, providing for the issuance of not more than $650,000 of Sewer Revenue Bonds, Series 2008 A for the replacement of Lift Station No. 11. The public hearing was convened at 7:10 p.m., but no person sought to comment upon the proposed measure. The mayor adjourned the public hearing and entered into the regular meeting at 7:10 p.m.

BUDGET CYCLE INFORMATIONAL PRESENTATION

Ellen Spears spoke on behalf of the Elkins-Randolph County Chamber of Commerce. As its executive director, she explained the business leadership role the organization seeks to fill. The Chamber's mission, she said, was to educate and inform its 270 members. Funding received from City of Elkins partially underwrites the costs of the 4th of July fireworks exhibition, the Children's Christmas Parade and general operating expenses.

INFORMATIONAL PRESENTATION
THE WEES NATIONAL HISTORIC DISTRICT NEIGHBORHOOD PLAN

Jennifer Giovannitti narrated a PowerPoint presentation explaining the Plan. Explanation was provided as to what constituted the District, the planning process that resulted in the Neighbor Plan, the purpose of the Plan, what the Plan was not and the contents of the Plan. An executive summary was provided to each member and a full copy of the plan was provided for reference.

PUBLIC COMMENT

There was none.

CONSENT CALENDAR

Cm Beckwith, seconded by Cw Wilmoth, MOVED THAT COUNCIL ACCEPT THE MINUTES OF THE REGULAR MEETING OF MARCH 6, 2008 AS PRESENTED. The motion carried.

Cm Hensil, seconded by Cw Wilmoth, MOVED THAT COUNCIL ACCEPT THE MINUTES OF THE SPECIAL CALL MEETING OF MARCH 13, 2008 AS PRESENTED. The motion carried.

UNFINISHED BUSINESS

No action was taken on Proposed Ordinance 072, establishing regulation of city trees.

Cm Malcolm, seconded by Cw Burford, MOVED THAT PROPOSED ORDINANCE 073, PROVIDING FOR THE ISSUANCE OF NOT MORE THAN $650,000 OF SEWER REVENUE BONDS, SERIES 2008A, BE BROUGHT FORTH, READ BY TITLE ONLY AND PASSED ON THIRD AND FINAL READING. The motion carried.

Cw Burford, seconded by Cm Talbott, MOVED THAT PROPOSED ORDINANCE 074, ESTABLISHING A MANDATORY MUNICIPAL COURT FEE ASSESSMENT FOR PURPOSES OF FUNDING THE RANDOLPH COUNTY TEEN COURT PROGRAM BE BROUGHT FORTH, READ BY TITLE ONLY, AND PASSED ON SECOND READING. The motion carried. No further action on the measure will be taken unless and until the Randolph County Commission adopts a similar measure.

NEW BUSINESS

Cm Satterfield, seconded by Cm Hensil, MOVED THAT COUNCIL ADOPT PROPOSED RESOLUTION 110, AUTHORIZING APPLICATION FOR OFFICE OF ECONOMIC OPPORTUNITY EMERGENCY SHELTER GRANT PROGRAM FUNDS FOR THE SUPPORT OF THE RANDOLPH COUNTY HOMELESS SHELTER. The motion carried. [$30,000 will be requested for the maintenance, upkeep and operation of the Shelter.]

Cm Satterfield, seconded by Cm Talbott, MOVED THAT COUNCIL ADOPT PROPOSED RESOLUTION 111, AUTHORIZING APPLICATION FOR STATE DEVELOPMENT GRANT FUNDS FOR THE MAINTENANCE OF CITY HALL. The motion carried. [Funds will be requested to replace the roof, pay the cost of professional termite extermination services and to repair and refurbish windows on the western side of the building.]

Cm Bibey, seconded by Cm Metheny, MOVED THAT COUNCIL ADOPT PROPOSED RESOLUTION 112, AUTHORIZING APPLICATION FOR ENFORCING UNDERAGE DRINKING GRANT PROGRAM FUNDS TO UNDERWRITE THE COST OF POLICE DEPARTMENT ENFORCEMENT INITIATIVES. The motion carried. Upon being informed that misdemeanor arrests of youthful offenders could result from enforcement initiatives, Cm Talbott said he felt the funds should instead be used for education as opposed to enforcement.

Cm Talbott, seconded by Cw Wilmoth, MOVED THAT COUNCIL ADOPT PROPOSED RESOLUTION 113, SUPPORTING ADOPTION OF THE WEES NATIONAL HISTORIC DISTRICT NEIGHBORHOOD PLAN. The motion carried.

Cm Hensil, seconded by Cm Talbott, MOVED THAT COUNCIL ADOPT PROPOSED RESOLUTION 114, APPROVING INVOICES RELATING TO THE PROPOSED WATER PROJECT AND AUTHORIZING DRAWDOWN NUMBER 6 THEREOF FROM FUNDS AVAILABLE FROM THE WATERWORKS SYSTEM DESIGN BOND ANTICIPATION NOTES, SERIES 2007. The motion carried. [Elkins Water Fund will be reimbursed for $158,000.00 of operating funds disbursed to Chapman Technical Group for completion of a December 2006 Comprehensive Report of the Water Treatment and Distribution System.]

Cm Woolwine, seconded by Cm Malcolm, MOVED COUNCIL SET THE LEVY RATES INDICATED ON THE LEVY ORDER AND RATE SHEET FOR FISCAL YEAR 2008/2009, REGULAR CURRENT EXPENSE LEVY.

Cm Woolwine, seconded by Cm Bibey, MOVED COUNCIL APPROVE OF AND ADOPT THE LEVY ESTIMATE, OFFICIAL BUDGET DOCUMENT, FOR THE GENERAL AND COAL SEVERANCE FUNDS FOR FISCAL YEAR 2008/2009. The motion carried.

Cw Wilmoth, seconded by Cm Hensil, MOVED THAT COUNCIL APPOINT RICHARD T. BUSCH AND THE FIRM OF BUSCH, ZURBACH AND THOMPSON AS CITY ATTORNEY FOR A ONE-YEAR TERM TO COMMENCE APRIL 1, 2008. The motion carried.

Cm Talbott, seconded by Cw Wilmoth, MOVED THAT COUNCIL RETAIN THE SERVICES OF VAN NORSTRAND ARCHITECTS TO UNDERTAKE AN ASSESSMENT OF THE CITY HALL BUILDING. The motion carried. Among areas of concern are water damage from the defective roof membrane and roof drains, deterioration of window casements, handicapped accessibility, compliance with current fire regulations and formulation of a long-range plan for the maintenance, upkeep and preservation of the structure.

Cm Metheny, seconded by Cm Woolwine, MOVED THAT COUNCIL AUTHORIZE THE MAYOR TO EXECUTE A CONTRACT WIT ALLEGHENY POWER FOR INSTALLATION OF A NEW STREET LIGHT ON POLE #A2-933, ON THE 1700 BLOCK OF S. DAVIS AVENUE. The motion carried.

COMMITTEE REPORTS

BUILDING

The Committee received 2 building permit applications since the last meeting of council, 3564 and 3565. Application 3566 was void. Acting upon recommendation of the building inspector, the Committee approved all applications.

Cm Malcolm, seconded by Cm Bibey, MOVED THAT COUNCIL GRANT BUILDING PERMITS FOR THE 2 APPLICATIONS APPROVED BY THE COMMITTEE. The motion carried.

PERMIT	APPLICANT	LOCATION	DESCRIPTION	VALUE
3564	Tribble, Christy	329 Davis Av	Signage	$ 500
3565	Barton, Glen	1006 S Davis Av	Re-roof	$ 5,100
3566	Void			$ -

FINANCE

Cm Woolwine thanked the members for accepting the Committee's budget recommendations, and he thanked all those involved in formulation of the spending plan.

PARKS

Plans were being laid to build new bathroom facilities in Glendale Park, Cm Beckwith announced. Additionally, the walking trail will be improved by the addition of benches for the use of pedestrians, and trees will be planted to provide shade.

RULES AND ORDINANCE

Cw Wilmoth said three applicants for the operations manager position would be interviewed on March 26.

PUBLIC SAFETY

A new police officer will commence training at the State Police Academy beginning in September, Cm Bibey announced.

RULES AND ORDINANCE

Cw Burford, referring to the latest revisions made to the tree ordinance, recommended consideration of the revised measure at the next meeting.

The Committee would schedule a meeting with the Landfill members to begin revision of the landfill's rate tariff.

STREETS

The city's Spring Cleanup will take place April 14-25.

Department of Highways will begin its cleanup of state roads on April 8.

Cm Hensil reported no further contact from state officials concerning the replacement of three Davis Avenue stoplights.

WATER

The city applied to USDA, Rural Development for federal assistance to construct a new membrane filtration water treatment plant and make major improvements to the water storage and distribution system. A notice will be published to inform the public of a meeting to be held on Thursday, April 10 at 7:00 p.m. in the overflow cafeteria seating area on the ground floor of Davis Memorial Hospital. The purpose of the meeting will be to provide an opportunity to the public to become acquainted with the proposed water project and to comment on economic and environmental impacts, service area, or alternatives to the project.

OTHER BUSINESS

There was none.

The meeting adjourned at 8:50 p.m.

/s/ Judith A. Guye, Mayor
/s/ Philip J. Graziani, City Clerk

WV MUNICIPAL BOND COMMISSION
#8 Capitol Street
Terminal Building, Suite 500
Charleston, WV 25301
(304) 558-3971

NEW ISSUE REPORT FORM

Date of Report: May 16, 2008

(See Reverse for Instructions)

ISSUE: The City of Elkins Sewer Revenue Bonds, Series 2008 A (The Huntington National Bank)

ADDRESS: 401 Davis Avenue, Elkins, West Virginia 26241 COUNTY: Randolph

PURPOSE OF ISSUE: New Money: X
Refunding: _____

REFUNDS ISSUE(S) DATED: N/A

ISSUE DATE: May 16, 2008

CLOSING DATE: May 16, 2008

ISSUE AMOUNT: $600,000

RATE: 5.25%

1ST DEBT SERVICE DUE: June 5, 2008

1ST PRINCIPAL DUE: June 5, 2009

1ST DEBT SERVICE AMOUNT: $ TBD

PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Steptoe & Johnson PLLC
Contact Person: John C. Stump, Esquire
Phone: (304) 353-8196

UNDERWRITERS COUNSEL: _____
Contact Person: _____
Phone: _____

CLOSING BANK: The Huntington Naional Bank
Contact Person: Randall Underwood
Phone: 304.636.0991

ESCROW TRUSTEE: _____
Contact Person: _____
Phone: _____

KNOWLEDGEABLE ISSUER CONTACT
Contact Person: Honorable Judy Guye
Position: Mayor
Phone: 304.636.3400

OTHER: _____
Contact Person: _____
Function: _____
Phone: (304) _____

DEPOSITS TO MBC AT CLOSE:
By: _____ Wire
_____ Check

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

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

____ To Escrow Trustee: $_____
____ To Issuer $_____
____ To Cons. Invest. Fund $_____
____ To Other: _____ $_____

NOTES: Series 2008 A Bonds Reserve Account to be funded over 10 years

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

The purpose of the NEW ISSUE REPORT FORM is to provide the WV Municipal Bond Commission with an early warning of three basic facts no later than the day of closing on any issue for which the Commission is to act as fiscal agent. These are:

1. Formal notification that a new issue is outstanding.
2. Date of first action or debt service.
3. Contact people should we lack documents, information, or funds needed to administer the issue by the date of the first action or debt service.

The commission recognizes that as bond transcripts become increasingly long and complex, it has become more difficult to assemble and submit them to the Commission within the 30 days specified by the West Virginia Code 13-3-8. This notice is not intended to provide all the information needed to administer an issue, but to alert the Commission and ensure that no debt service payments are missed due to delays in assembling bond transcripts. If, at the time of closing, documents such as the ordinance and all supplements, debt service schedules, and a specimen bond or photostat are available and submitted with this form, it will greatly aid the Commission in the performance of its duties. These documents are needed to set up the proper accounts and to advise the issuer of monthly deposit requirements as far in advance of the first debt service as possible.

It is not necessary to complete all items if they are not pertinent to your issue. Indicate the County of the issuer. With PSDs that overlap more than one county, indicate the county of their business office. Complete "Rate" only if the issue has only one rate. Please complete a separate form for each series of an issue. Other important information can be recorded under "Notes."

Again, please submit this form on each new issue on the day of closing. If fund transfers into or out of the Commission at closing are required, please submit this form before closing. If no significant facts change by closing, no resubmission at closing is required. If, however, there are changes, please submit an updated form, with changes noted, at closing.

If you should have any questions concerning this form, please call the Commission.

THE HUNTINGTON NATIONAL BANK

TERM SHEET

The City of Elkins
Sewer Revenue Bonds, Series 2008

Principal Amount:	Not more than $600,000.
Maturity:	132 months from Closing; prepayment in whole or in part at any time permitted without penalty.
Repayments:	Months 1-12 (interest only on principal amount outstanding) Months 13-132 (principal and interest payments)
Interest:	A. Interest on the Bond shall be payable at the rate of 5.25% per annum (hereinafter sometimes called the "Tax-Exempt Rate"). B. Notwithstanding any other provision herein, in the event the interest on the Bond is declared to be includible in gross income for federal income tax purposes by the Internal Revenue Service ("Determination of Taxability"), interest on the Bond shall be payable at the rate of 8.0% per annum (hereinafter sometimes called the "Taxable Rate"). Interest at the Taxable Rate shall commence to accrue on the date of Determination of Taxability and such interest rate shall be charged retroactively and prospectively for all periods in which interest paid on the Bond is asserted, declared or determined to be includible in gross income for federal income tax purposes, and shall continue until the entire principal of and interest on the Bond are paid, notwithstanding that the entire principal amount of the Bond may have been paid in full prior to the Determination of Taxability. Any interest being past due on the Bond by reason of such increase shall become immediately due and payable.
Reserve:	One year's annual debt service. The reserve account to be held at the Municipal Bond Commission and the reserve may be funded at closing or 120 months.
Security:	First lien pledge of Net Revenues on a parity with the Prior Bonds.
Tax Status of Bonds:	Tax-exempt and "bank qualified" under Section 265(b)(3) of the Internal Revenue Code.
Draws:	The funds from the purchase of the Bonds will be available on a line of credit basis
Bond Counsel and Legal Opinion:	Steptoe & Johnson PLLC, Charleston, West Virginia, will prepare the Bonds and all resolutions, certificates and other documents, and will deliver their unqualified approving opinion regarding the validity and tax-exempt and bank-qualified status of the Bonds. The City will pay all fees and expenses of bond counsel and any other counsel engaged by the City from proceeds of the Bonds. All counsel or other fees and expenses of the purchaser will be the responsibility of the purchaser.
Bank Fee:	$500.00
Expiration:	June 1, 2008

The Huntington National Bank
Davis Avenue at Fifth Street
P O Box 1279
Elkins, WV 26241
304.636.3400 Office
304.636.2422 Facsimile

Huntington

May 16, 2008

The City of Elkins
Sewer Revenue Bonds, Series 2008 A
(The Huntington National Bank)

The City of Elkins
Elkins, West Virginia

Steptoe & Johnson PLLC
Charleston, West Virginia

Ladies and Gentlemen:

The undersigned Randall Underwood, Vice President of The Huntington National Bank, Elkins, West Virginia (the "Purchaser"), on behalf of the Purchaser in connection with its purchase of $600,000 aggregate principal amount of Sewer Revenue Bonds, Series 2008 A (the "Bonds"), issued by The City of Elkins (the "Issuer") on the date hereof, hereby makes the following representations and warranties to you that:

1. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by our purchase of the Bonds, and our net worth and available assets are such that we are able to bear the economic risk of our purchase of the Bonds.

2. We understand that the entire principal of and interest on the Bonds are payable by the Issuer solely from and secured by a first lien on the Net Revenues of the System; that the Bonds are special and limited obligations of the Issuer and are not general obligations or secured by any obligation or pledge of any monies received or to be received by the Issuer other than as described above; that the Bonds do not now and shall never constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation.

There are outstanding bonds of the Issuer which will rank on a parity with the Series 2008 A Bonds as to liens, pledge, source of and security for payment being the Issuer's (i) Supplemental Subordinate Sewer Revenue Bonds Series 1986 B, (West Virginia Water Development Authority) dated April 28, 1986, issued in the original aggregate principal amount

of $517,001; (ii) Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated August 22, 1996, issued in the original aggregate principal amount of $300,000; (iii) Sewer Refunding Revenue Bonds, Series 2004 A, dated June 18, 2004, issued in the original aggregate principal amount of $1,022,000 and (iv) Sewer Revenue Bonds, Series 2006 A (West Virginia SRF Program), dated December 7, 2006, issued in the original aggregate principal amount of $8,588,400.

3. We understand that no official statement, prospectus, offering circular or other offering statement containing material information with respect to the Issuer or the Bonds is being issued, that the Bonds are unrated, and that in due diligence, we have made our own inquiry and analysis with respect to the Issuer, the Bonds and the security therefor, and other material factors affecting the security for and payment of the Bonds, and are relying solely on such inquiry and analysis in our purchase of the Bonds.

4. We acknowledge that during the course of the transaction and prior to the sale of the Bonds, we have requested or have had access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and we have had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Issuer, the Bonds and the security therefor, so that as a reasonable investor, we have been able to make our decision to purchase the Bonds. No such information requested by us has been denied to us.

5. Because of our experience in financial and business matters, we feel that we are qualified to make the inquiry and analysis described in paragraph 3 and to understand fully the documents and information described in paragraph 4.

6. We understand that the Internal Revenue Code of 1986, as amended (the "Code"), prescribes satisfaction of several requirements in order that interest on the Bonds be and remain excludable from gross income for federal income tax purposes, some of which apply after issuance of the Bonds, and that noncompliance by the Issuer with certain of such requirements could cause interest on the Bonds to be includable in gross income for federal income tax purposes and thus, subject to federal income taxation retroactively to the date hereof. We also understand that under the Code, interest on obligations, such as the Bonds, which are not "private activity bonds," are not an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations by Section 55 of the Code, but that a provision of the Code which is applicable to corporations (as defined for federal income tax purposes), and which would impose an alternative minimum tax on a portion of the excess of adjusted net book income over pre-book alternative minimum taxable income, could subject part of the interest on the Bonds received by corporations to such corporate alternative minimum tax. Additionally, we understand that for tax years beginning after 1986, interest on the Bonds earned by some corporations could be subject to the environmental tax imposed by Section 59A of the Code and enacted by the Superfund Revenue Act of 1986, and that for taxable years beginning after 1986,

interest on the Bonds earned by certain foreign corporations doing business in the United States could be subject to the branch profits tax imposed by the Code.

7. We understand that the Bonds (a) are not being registered under the Securities Act of 1933, as amended, and are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed on any stock or other securities exchange, (c) will carry no rating from any rating service, and (d) may be resold only to purchasers who meet the criteria set forth herein and who, as a condition to such purchase, deliver an executed letter substantially in the form hereof to Steptoe & Johnson PLLC, Charleston, West Virginia.

8. We are purchasing the Bonds for investment in our own account and do not intend to divide the Bonds purchased by us nor to resell or otherwise dispose of all or any part of the Bonds purchased by us, except as permitted by law on a basis of full disclosure to any subsequent holder of the Bonds and subject to applicable securities laws and regulations thereunder.

9. We have had the opportunity to consult with and be advised by legal counsel as to the significance of this letter and we have satisfied ourselves that the Bonds are a lawful investment for us under all applicable laws.

Very truly yours,

THE HUNTINGTON NATIONAL BANK

By:_____
Its: Vice President

04.28.08
255620.00016

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0496

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

November 19, 2007

Judith A. Guye, Mayor
City of Elkins
401 Davis Avenue
Elkins, WV 26241

RE: Elkins Lift Station #11 Replacement
Plans & Specifications Approval
SRF No. C-544382

Dear Mayor Guye:

The plans and specifications for the above referenced project are hereby approved. This approval DOES NOT constitute authority to advertise for bids. You will be advised by separate letter from this agency as to when such an advertisement can be initiated.

Please be advised it may be necessary to issue an addendum to the contract documents prior to opening of bids to include the current minimum prevailing wages, as promulgated by the WV Division of Labor. This and all addenda and revisions to the contract documents must be telefaxed to this office for approval and issued to plan holders five (5) days prior to bid opening. Failure to submit addenda in a timely manner will automatically nullify approval to open bids. Any addenda issued inside the five (5) day period prior to the bid opening must include an automatic extension to the bid opening date of a minimum of seven (7) days.

If you have any questions concerning this project, please do not hesitate to contact the project engineer, Robert Coontz, P.E. at (304) 457-4588 ext. 3209.

Sincerely,

Lisa A. McClung
Director

LAM/l

Enclosure

cc: John Goodman, Burgess & Niple, Inc.

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Tel. No.: 304-926-0495
Fax No.: 304-926-0463

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

February 10, 2005

Honorable Judith A. Guye
Mayor, City of Elkins
401 Davis Ave
Elkins, WV 26241

CERTIFIED RETURN RECEIPT REQUESTED

Re: WV/NPDES Permit No. WV0020028
Modification No. 2

Dear Mayor Guye:

This letter serves as Modification No. 2 of your existing WV/NPDES Water Pollution Control Permit No. WV0020028 issued the 30th day of August 2002.

After review and consideration of the information accompanying WV/NPDES Water Pollution Control Permit No. WV0020028 and after consideration of the information submitted on, and with Permit Modification Application No. WV0020028-B, dated the 7th day of November 2004, additional information received on January 14, 2005 & January 24, 2005, and other relevant information, the subject Permit is hereby modified to incorporate the following:

1. To acquire, construct, install, operate, maintain, upgrade and expand the preliminary treatment facility (screening and grit removal), oxidations ditch (aeration), ultraviolet disinfection unit (flow boxes and lights), laboratory, and solids dewatering facility (belt filter presses and pumps). New facilities include a secondary clarifier, return/waste solids pump station, scum pump stations, decant tank, septage receiving facility, and dewatering sludge storage building, and all necessary appurtenances.

2. The wastewater treatment system improvements shall be constructed in accordance with the plans, specifications and reports approved by the Division of Water and Waste Management, Engineering Branch. A further description of these documents is presented as follows:

SEWAGE TREATMENT PLANT IMPROVEMENTS CONSTRUCTED
IN ACCORDANCE WITH:

Plans, Specifications, and Reports:

Prepared by:	Burgess & Niple, Inc. 312 Plum Street 12th Floor Cincinnati, OH 45202-2678
Title:	City of Elkins Sanitary Wastewater Treatment Plant Improvements
Project No.:	C-544382
Date Approved:	November 29, 2004

The wastewater treatment plant and wastewater collection system improvements shall be completed as described below:

Advertise for bids	January 2006
Begin construction	April 2006
Complete construction	July 2007

The City of Elkins shall notify this Division the date on which the upgrades have been completed. Pages 11 to 14, and 28 to 31 of 44, of the permit have been revised to reflect the changes made in the permit.

Please find enclosed revised Pages 11 to 14, and 28 to 31 of 44, along with a Discharge Monitoring Report of your existing WV/NPDES Water Pollution Control Permit No. WV0020028. These documents shall supersede the ones currently in your possession on completion of the upgrades of the wastewater collection and treatment system and should be incorporated, as appropriate, into your existing WV/NPDES Water Pollution Control Permit.

All other terms and conditions of WV/NPDES Water Pollution Control Permit No. WV0020028 shall remain in effect and unchanged.

Sincerely,

Ken Ellison
Acting Director
Division of Water and Waste Management

KE:bsg
Enclosures
cc: Env. Inspector Supervisor
Env. Inspector
EPA Region III
Craig D. Richards, Burgess & Niple, Inc.✓

NOTE AND BOND ORDINANCE

CITY OF ELKINS, WEST VIRGINIA

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NOTE AND BOND ORDINANCE

Introduced in Council

February 6, 1986

Introduced by

Margaret Hutton

Passed by Council

February 20, 1986

An Ordinance authorizing the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage facilities of the City of Elkins; authorizing the issuance of not more than $1,200,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1986, and not more than $600,000 in aggregate principal amount of Supplemental Subordinate Sewer Revenue Bonds, Series 1986, of said City of Elkins to be used, along with other funds and moneys of, or available to, the City of Elkins which may be lawfully expended for such purposes, to finance the cost of such acquisition and construction, and if determined by supplemental resolution to fund reserve accounts for such bonds and to pay other costs in connection therewith; authorizing the issuance of not more than $5,000,000 in aggregate principal amount of City of Elkins Sewerage System Grant Anticipation Notes, Series 1986; authorizing an irrevocable line of credit in an amount not to exceed $1,000,000 to provide funds for such acquisition and construction to the extent grant proceeds or other funds are not available therefor, and authorizing an agreement with respect to said line of credit; providing for the rights and remedies of and security for the owners of such bonds; and adopting other provisions related thereto.

Be It Ordained by the City Council of the City of Elkins, West Virginia:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority of this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended (the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared as follows:

A. The City of Elkins, West Virginia (the "City"), now owns a public sewage treatment system (the "System"), consisting of a sewage treatment plant or plants and some or all of collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations, ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, convenient or incidental for the collection, treatment and disposal in a sanitary manner of sewage and industrial wastes.

B. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the City that there be constructed certain extensions, additions, betterments and improvements to the System (the "Project") at an estimated cost of $6,340,423, in accordance with the plans and specifications prepared and revised by Kelley, Gidley, Blair and Wolfe, Consulting Engineers, Charleston, West Virginia (the "Consulting Engineers"), which plans and specifications are on file with the City, and which Project is generally described in Exhibit A attached hereto and by this reference made a part hereof and has an estimated useful life in excess of forty (40) years.

C. The Sanitary Board of the City has presented a petition to the City for enactment of this Note and Bond Ordinance.

D. The estimated revenues to be derived in each year after the enactment of this Ordinance from the operation of said System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Original Bonds and all sinking fund and other payments provided for in this Ordinance.

E. It is deemed necessary for the City to issue its Original Bonds to finance the costs of acquisition and construction of the extensions, additions, betterments and improvements to the System herein described and contemporaneously therewith, or as soon as practicable thereafter, to issue its Sewerage System Grant Anticipation Notes, Series 1986 or enter into the agreement with respect to the Line of Credit, both as hereinafter defined, whichever is determined by supplemental resolution to best serve the City's interest. Said costs shall be deemed to include the cost of the acquisition of any real property involved; the cost of the construction of said extensions, additions, betterments and improvements to the System and any other expenses necessary, incidental, desirable or appurtenant to the acquisition and construction of such extensions, additions, betterments and improvements to the System; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; expenses for fiscal or other

agents in connection with the issuance of the Original Bonds; interest on the Primary Bonds prior to, during and for 6 months after completion of construction of the Project; and such other expenses as may be necessary or desirable to said acquisition and construction of the extensions, additions, betterments and improvements to the System authorized by this Ordinance and the financing authorized by this Ordinance.

F. It is in the best interests of the City that its Original Bonds be sold to the Authority pursuant to the terms and provisions of the WDA Loan Agreements to be entered into between the City and the Authority, in form satisfactory to the City and the Authority.

G. There are not outstanding any obligations of the City which will rank prior to or on a parity with the Original Bonds and the Notes as to lien and source of and security for payment.

H. The City has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Original Bonds and the Notes, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired.

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Original Bonds and such other 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 Bondholders, and the covenants and agreements herein set forth to be performed by said City shall be for the equal benefit, protection and security of the legal owners of any and all of such Primary Bonds and of such Supplemental Bonds, as the case maybe, all of which Primary Bonds and Supplemental Bonds, respectively, shall be of equal rank and without preference, priority or distinction between any one Primary Bond and any other Primary Bonds or between any one Supplemental Bond and any other Supplemental Bond, as the case may be, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings in this Ordinance unless the context expressly requires otherwise:

A. "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.

B. "Authority" shall mean the West Virginia Water Development Authority, which is expected to be the original purchaser of the Original Bonds, or any other agency of the State of West Virginia that succeeds to the function of the Authority.

C. "Authorized Officer" means the Mayor of the City or any acting Mayor duly appointed by the Council.

D. "Bond Construction Trust Fund" shall mean the fund created by Section 5.02 hereof.

E. "Bondholder" or "Owner of the Bonds" or "Owner" or any similar term shall mean any person who shall be the registered owner of any outstanding Bond or Supplemental Bond, as the case may be.

F. "Bonds" shall mean collectively, the Primary Bonds and the Supplemental Bonds, both as hereinafter defined.

G. "City" shall mean the City of Elkins, a municipal corporation of the State of West Virginia, and, when appropriate, also means the Council thereof and any department, board, organizing or instituting thereof in control of the management and operation of the System, as hereinafter defined.

H. "Clerk" or "City Clerk" means the Clerk of the City.

I. "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.

J. "Consulting Engineers" shall mean Kelley, Gidley, Blair & Wolfe, Consulting Engineers, Charleston, West Virginia, or any engineer or firm of engineers which shall at any time hereafter be retained by the City as Consulting Engineers for the System as hereinafter defined.

K. "Cost of Project" shall mean those costs described in Section 1.02(E) hereof to be a part of the cost of the acquisition and construction of the Project, as hereinafter defined.

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

M. "Credit Line Note" means the note authorized by Section 7.02 hereof to evidence any draw under the Line of Credit, as hereinafter defined.

N. "Depository Bank" shall mean the bank designated as such in the Supplemental Resolution, as hereinafter defined, and its successors and assigns.

O. "Eligible Costs" means Costs of the Project which are reimbursable in full on a dollar-for-dollar basis from EPA Grant Receipts, the total of which are equal in amount to the EPA Grant.

P. "EPA" means the United States Environmental Protection Agency or any successor to the functions of the EPA.

Q. "EPA Grant" or "Grant" means the grant from the EPA pursuant to the commitment therefor.

R. "Event of Default" means any occurrence or event specified in Section 10.01.

S. "FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

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

U. "Government Obligations" shall mean (i) direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

V. "Grant Agreement" means a written commitment for the payment of the EPA Grant specifying the amount of such grant, the terms and conditions upon which such grant is made and the date or dates or event or events upon which grant is to be paid to the City.

W. "Grant Receipts" means all moneys received by the City on account of the Grant after the date of issuance of the Notes.

X. "Gross Revenues" shall mean the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt

payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined) or any Tap Fees, as hereinafter defined, and for the furnishing by the City of miscellaneous service.

Y. "Indenture" or "Trust Indenture" means the Trust Indenture between the City and the Trustee relating to the Notes, as hereinafter defined, if issued, and all supplements or amendments thereto.

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

AA. "Line of Credit" means the irrevocable line of credit in an amount not to exceed $1,000,000 to be approved by the Supplemental Resolution.

BB. "Line of Credit Agreement" means the agreement establishing the Line of Credit, said agreement to be an exhibit to the Supplemental Resolution.

CC. "Loan Agreement" shall mean the Loan Agreement between the Authority and the City, in substantially the form attached as Exhibit B hereto and incorporated herein by reference, providing for the purchase of the Primary Bonds from the City by the Authority.

DD. "Mayor" shall mean the Mayor of the City.

EE. "Net Revenues" shall mean the balance of the Gross Revenues remaining after deduction of Operating Expenses, as hereafter defined.

FF. "Noteholder", "Holder of the Notes", or "Holder of the GANs" or any similar term means any person who shall be the registered owner of any outstanding Note or Notes as hereinafter defined.

GG. "Notes" or "GAN" means the not more than $5,000,000 in aggregate principal amount of Sewerage System Grant Anticipation Notes, Series 1986, originally authorized hereby, and unless the context clearly indicates otherwise, the terms "Notes" or "GAN" includes any refunding Notes or GAN of the City.

HH. "Notes Capitalized Interest Account" means the account established in the Indenture.

II. "Notes Construction Trust Fund" means the Notes Construction Trust Fund established in the Indenture.

JJ. "Notes Cost of Issuance Account" means the Notes Cost of Issuance Account within the Notes Construction Trust Fund established in the Indenture.

KK. "Notes Debt Service Fund" means the Notes Debt Service Fund established in the Indenture.

LL. "Note Registrar" means the bank to be designated as such in the Supplemental Resolution and its successors and assigns.

MM. "Operating Expenses" shall mean the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Registrar and Paying Agent (both as hereinafter defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Primary Bonds or the principal of the Supplemental Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

NN. "Operation and Maintenance Fund" means the Operation and Maintenance Fund established by Section 4.01 hereof.

OO. "Original Bonds" or "Bonds originally authorized hereby" or similar phrases shall mean, collectively, the Primary Bonds and the Supplemental Bonds, issued for the purpose of paying a portion of the Costs of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto.

PP. "Original Notes Purchaser" means the person, partnership or corporation named in a resolution supplemental hereto.

QQ. "Outstanding," when used with reference to the Original Bonds, whether Primary or Supplemental Bonds, and as of any particular date, describes all such Bonds theretofore

and thereupon being delivered being authenticated and delivered except (i) any such Bond cancelled 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 Bonds, 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 8.05 hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any such Bond registered to the City.

RR. "Parity Bonds" shall mean additional Bonds issued under the provisions and within the limitations prescribed by Section 8.08 hereof, payable from Net Revenues on a parity with the Primary Bonds.

SS. "Parity Supplemental Bonds" shall mean additional Bonds issued under the provisions and whether the limitations prescribed by Section 8.08 hereof, payable from Net Revenues on a parity with the Supplemental Bonds.

TT. "Paying Agent" shall mean the bank or banks designated as such in a resolution supplemental hereto.

UU. "Primary Bonds" shall mean the not more than $1,200,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1986, originally authorized by this Ordinance and any pari passu additional Bonds hereafter issued within the terms, restrictions and conditions contained herein.

VV. "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 water development revenue bonds of the Authority.

WW. "Project" shall mean the extensions, additions, betterments and improvements described in Exhibit A attached hereto to the existing public sewage treatment system of the City.

XX. "PSC" means the Public Service Commission of West Virginia or any other agency of the State that succeeds to the functions of the PSC.

YY. "Qualified Investments" shall mean and include any of the following:

(a) Government Obligations;

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

certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations.

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the Federal Deposit Insurance Corporation ("FDIC") or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

(g) The "consolidated fund" (or any distinct portion thereof) managed by the West Virginia State Board of Investments pursuant to Article 6, Chapter 12 of the Code of West Virginia, 1931, as amended, provided that investments by such fund (or portion thereof) on behalf of the City may only be in Qualified Investments other than the those described in this paragraph (g); and

(h) Tax-exempt securities.

ZZ. "Rebate Deposit" shall mean the excess of - (A) the aggregate amount earned for the period from the date of issue of the Bonds to the computation date on all obligations in which any moneys in the funds and accounts described in these instructions are invested (the "Nonpurpose Obligations"), over - (B) the amount that would have been earned for such period if the yield on the Nonpurpose Obligations had been equal to the yield of the Primary Bonds.

Aa. "Rebate Fund" means the trust fund created pursuant to Section 4.01(5) hereof.

Bb. "Rebate Income Account" means the trust account established within the Rebate Fund pursuant to Section 4.01(5)(b) hereof.

Cc. "Rebate Principal Account" means the trust account established within the Rebate Fund pursuant to Section 4.01(5)(a) hereof.

Dd. "Registrar" shall mean the bank designated as such in a resolution supplemental hereto.

Ee. "Renewal and Replacement Fund" shall mean the depreciation fund created by Section 4.01 hereof.

Ff. "Reserve Account" shall mean the account in the Sinking Fund, as hereinafter defined, created by Section 4.02 hereof.

Gg. "Reserve Account Requirement" shall mean the maximum amount of principal and interest which will mature and come due on the Primary Bonds in any succeeding Fiscal Year.

Hh. "Revenue Fund" shall mean the revenue fund created by Section 4.01(A) hereof.

Ii. "Sanitary Board" means the Sanitary Board of the City established by ordinance duly enacted by this City and successors to the function thereof.

Jj. "Sinking Fund" shall mean the fund created by Section 4.02 hereof.

Kk. "State" shall mean the State of West Virginia.

Ll. "Supplemental Bonds" shall mean the not more than $600,000 in aggregate principal amount of Supplemental Subordinate Sewer Revenue Bonds, Series 1986, originally authorized by this Ordinance and any pari passu additional Bonds hereinafter issued within the terms, resolutions and conditions contained herein.

Mm. "Supplemental Loan Agreement" shall mean the Supplemental Loan Agreement between the Authority and the City, in substantially the form attached as Exhibit C hereto and incorporated herein by reference, providing for the purchase of the Supplemental Bonds from the City by the Authority.

Nn. "Supplemental Bonds Reserve Account" means the account established in the Supplemental Sinking Fund pursuant to Section 4.02 hereof.

Oo. "Supplemental Reserve Requirement" shall means as of any date of calculation, the maximum amount of principal which will become due on the Supplemental Bonds in any succeeding Fiscal Year.

Pp. "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 the Original Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Original Bonds and not so included may be included in another Supplemental Resolution.

Qq. "Supplemental Sinking Fund" means the Supplemental fund established by Section 4.02 hereof.

Rr. "System" shall mean the complete existing public sewerage system now owned by the City, consisting of a sewage treatment system, and shall include any extensions, additions, betterments and improvements thereto hereafter acquired or constructed for said sewer system from any sources whatsoever, both within and without said City.

Ss. "Tap Fees" shall mean the fees, if any, paid by prospective customers of the System in order to connect thereto.

Tt. "WDA Loan Agreements" shall mean, collectively, the Loan Agreement and the Supplemental Loan Agreement.

Uu. 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.

Vv. 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.

Ww. 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.

Xx. 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 the acquisition and construction of the Project in accordance with plans and specifications therefor prepared by the Consulting Engineers.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization and Terms of Original Bonds. For the purpose of financing a portion of the costs of the acquisition and construction of the Project not otherwise provided for, there shall be issued the Original Bonds of the City. The Original Bonds shall be issued in two issues, to be designated, respectively, "Sewer Revenue Bonds, Series 1986" in an aggregate principal amount of not more than $1,200,000, and "Supplemental Subordinate Sewer Revenue Bonds, Series 1986," in the aggregate principal amount of not more than $600,000. The Original Bonds shall be dated as of the date of delivery thereof, shall mature on October 1 in such years, not exceeding forty (40) years after the date of issuance; and in such amounts as shall be set out in Schedule X to the WDA Loan Agreements, respectively. The Primary Bonds shall bear interest at the rate of 9.75 percent per annum, payable semiannually, on April 1 and October 1 of each year, beginning on the first interest payment date following issuance and delivery of the Original Bonds. The Supplemental Bonds bear no interest. The Original Bonds shall contain such other terms, provisions, conditions and limitations, all as provided by this Ordinance and the WDA Loan Agreements 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 Original Bonds.

The Bonds shall be payable as to principal at the principal 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 its appears on the books of the Registrar, provided, that so long as the Authority is the owner thereof, interest on the Primary Bonds may be paid by wire transfer or other methods satisfactory to the City, the Paying Agent and the Authority.

Unless otherwise provided by the Supplemental Resolution, the Original Bonds shall be issued in the form of a single bond for each issue, fully registered to the Authority, with a payment record attached, representing the aggregate principal amount of each issue, and shall mature in principal installments, all as provided in the WDA Loan Agreements and said Supplemental Resolution. Bonds shall be exchangeable at the option and expense of the Owner for other fully registered Bonds in aggregate principal amount equal to the amount of said Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds may be issued in fully registered form, in the denomination of $5,000 or any integral multiple thereof, all as determined by a Supplemental Resolution. Said Bonds shall be dated as of the date specified in a said Supplemental Resolution and shall bear interest from such date.

Section 3.02. Execution of Bonds. Said Bonds shall be executed in the name of the City by the Mayor, and the seal of the City shall be affixed thereto or imprinted thereon and attested by the Clerk. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed have been sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Bonds shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and

until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.08 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, if applicable, 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 owner, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive owner shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value in the manner provided hereinafter in the form of said Bonds.

So long as any of the Bonds remain outstanding, the City, through the Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

Bonds shall be transferable only upon the books of the Registrar, by the registered Owner thereof in person or by his 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 his duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring Bonds are 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 cancelled by the Registrar. For every such exchange or transfer of Bonds, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of 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 or, next preceding the date of the selection of Bonds to be redeemed.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bonds shall become mutilated or be destroyed, stolen or lost, the City may in its discretion issue and deliver a new Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bonds, upon surrender and cancellation of such mutilated Bonds, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Owner's furnishing the City proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur. All Bonds so surrendered shall be cancelled by the Registrar and held for the account of the City. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen, or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Primary Bonds or Supplemental Bonds, as the case may be, issued hereunder.

Section 3.06. Bonds not to be Indebtedness of the City. The Bonds shall not, in any event, be or constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Owner or Owners of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the City to pay the Bonds or any interest thereon.

Section 3.07. Primary Bonds Secured by Pledge of Net Revenues; Supplemental Bonds to be Junior and Subordinate to Primary Bonds. The payment of the debt service of all the Primary Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System. The payment of the debt service of all the Supplemental Bonds shall also be secured forthwith equally and ratably with each other by a lien on the Net Revenues derived from the System, but junior and subordinate to the lien on such Net Revenue in favor of the Owners of the Primary Bonds. Such

Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the sinking funds and the reserve accounts therein and in the Renewal and Replacement Fund hereinafter established, are hereby irrevocably pledged to the payment of the principal of and any interest on the Bonds as the same become due.

Section 3.08. Form of Bonds. The text of the Primary Bonds and Supplemental Bonds shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof.

[FORM OF THE PRIMARY BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF RANDOLPH
CITY OF ELKINS
SEWER REVENUE BOND,
SERIES 1986

No. R-_____ $_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF ELKINS, a municipal corporation of the State of West Virginia in Randolph 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 _____ ($_____), in installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference, with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest rate on each installment shall run from the date of this Bond until payment of such installment, and such interest shall be payable on the 1st day of April, and the 1st day of October in each year beginning _____ 1, 198__. 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 principal corporate trust office of _____, _____, West Virginia, as register and paying agent

(the "Registrar"). The interest on this Bond is payable by check or draft mailed to the Payee at the address as it appears on the books of the Register on the 15the 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 at any time, but only with the express written consent of the Authority and as otherwise provided by the Loan Agreement, dated as _____, between the City and the Authority.

This Bond is issued (i) to pay costs of acquisition and construction of certain improvements, additions, extensions and betterments to the existing public sewerage system of the City (the "Project"), (ii) [to fund a reserve account therefor; and (iii)] to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the City on the _____ day of _____, 1986, and a Supplemental Resolution adopted by the City on the _____ day of _____, 1986 (collectively called 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 the Bonds under the Ordinance.

This Bond is issued contemporaneously with the Supplemental Subordinate Sewer Revenue Bonds, Series 1986 of the City (the "Supplemental Bonds"), issued in the aggregate principal amount of $_____, which Supplemental Bonds are junior and subordinate with respect to liens and sources of and security for payment of the Bonds of this issue.

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, moneys in the Reserve Account created under the Ordinance and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the 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 thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve

Account and unexpended Bond proceeds. 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 amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity or prior to the Bonds, payable from such revenues, provided however, that so long as there exists in the Reserve Account an amount equal to the maximum amount of principal and interest which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year, such percentage may be reduced to 110%. The City has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, 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, shall be applied solely to the payment of the Costs of the Project described in the Ordinance or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by 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 ELKINS 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 Clerk, and has caused this Bond to be dated _____, 1986.

[SEAL]

_____
Mayor

ATTEST:

_____
Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

_____
as Registrar

By _____
Its Authorized Officer

Dated: _____

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____

_____

_____

_____

_____

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said City with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

[FORM OF THE SUPPLEMENTAL BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF RANDOLPH
CITY OF ELKINS
SUPPLEMENTAL SUBORDINATE
SEWER REVENUE BOND,
SERIES 1986

No. SR-_____ $_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF ELKINS, a municipal corporation of the State of West Virginia in Randolph 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 respected assigns, the sum of _____ ($_____), in installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the principal corporate trust office of _____, _____, West Virginia, as register and paying agent (the "Registrar"). This Bond bears no interest.

This Bond may be redeemed prior to its stated date of maturity in whole or in part at any time, but only with the express written consent of the Authority.

This Bond is issued (i) to pay costs of acquisition and construction of certain improvements, additions, extensions and betterments to the existing public sewerage system of the City (the "Project"), and (ii) [to fund a reserve account therefor; and (iii)] to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the City on the _____ day of _____, 1986, and a Supplemental Resolution adopted by the City on the _____ day of _____, 1986 (collectively called 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 the Bonds under the Ordinance.

This Bond is issued contemporaneously with the Sewer Revenue Bonds, Series 1986, of the City (the "Primary Bonds") issued in the aggregate principal amount of $_____, which Primary Bonds rank prior with respect to liens and sources of and security for payment to the Bonds of this issue.

This Bond is payable only from and secured by a pledge of a second lien on the Net Revenues (as defined in the Ordinance) to be derived from the operation of the System, moneys in the Reserve Account created under the Ordinance and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations, nor shall the City be obligated to pay the same except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. 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 amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations on a parity or prior to the Bonds, provided however, that so long as there exists in the Reserve Account an amount equal to the maximum amount of principal which will become due on the Bonds and any bonds on a parity therewith in any succeeding fiscal year, and in the reserve account for the Primary 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 the Bonds for the terms of which reference is made to the Ordinance. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

This Bond is transferable, 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, shall be applied solely to the payment of the Costs of the Project described in the Ordinance or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond; provided that such lien on moneys deposited in the Bond Construction Trust Fund created by the Ordinance shall be subordinate to that of the Primary Bonds.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of 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 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 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 ELKINS 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 Clerk, and has caused this Bond to be dated _____, 1986.

[SEAL]

_____
Mayor

ATTEST:

_____
Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Supplemental Bonds described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above.

_____
as Registrar

By _____
Its Authorized Officer

Date: _____

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____

_____

_____

_____

_____

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said City with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

Section 3.09. Sale of Original Bonds; Execution of WDA Loan Agreements. The Original Bonds shall be sold to the Authority, pursuant to the respective terms and conditions of the WDA Loan Agreements. As a ratification of the resolution of Council authorizing execution of the WDA Loan Agreements, the Mayor is specifically authorized and directed to execute the WDA Loan Agreements and the Clerk is directed to affix the seal of the City, attest the same and deliver the WDA Loan Agreements to the Authority. The WDA Loan Agreements are specifically incorporated into this Ordinance.

ARTICLE IV

SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created with and shall be held by, the Depository Bank:

(1) Revenue Fund;

(2) Operation and Maintenance Fund;

(3) Renewal and Replacement Fund;

(4) Bond Construction Trust Fund; and

(5) Rebate Fund;

(a) Within the Rebate Fund, the Rebate Principal Account, and

(b) Within the Rebate Fund, the Rebate Income Account.

Section 4.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby established with the Commission:

(1) Sinking Fund;

(a) Within the Sinking Fund, the Reserve Account.

(2) Supplemental Sinking Fund;

(a) Within the Supplemental Sinking Fund the Supplemental Bonds Reserve Account.

Section 4.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner therein provided.

(1) The City shall, each month, transfer from the Revenue Fund and deposit in the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System.

(2) Thereafter, from the money remaining in the Revenue Fund, the City shall next, on the first day of each month, commencing seven months prior to the first date of payment of interest on the Primary Bonds from Net Revenues, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on said Primary Bonds on the next ensuing semiannual interest payment date, with a credit to the deposit preceding the interest payment for any amounts already on deposit therein.

(3) The City shall also, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Primary Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Primary Bonds on the next ensuing principal payment date, with a credit to the deposit preceding the principal payment for any amounts already on deposit therein and not credited pursuant to paragraph (2) above.

(4) The City shall also, on the first day of each month, commencing 13 months prior to the first date of payment of principal of the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Reserve Account, an amount equal to 1/120th of the Reserve Requirement; provided, that no further payments shall be made into the Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Reserve Requirement. If the City deposits the Reserve Requirement in the Reserve Account when the Primary Bonds are issued and delivered, then no monthly deposits are required unless the Reserve Account is drawn upon an contains less than the Reserve Requirement.

Moneys in the Sinking Fund shall be used only for the purposes of paying principal of and interest on the Primary Bonds as the same shall become due. Moneys in the Reserve

Account in the Sinking Fund shall be used only for the purpose of paying principal of or interest on the Primary Bonds, as the same shall come due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose. All investment earnings on moneys in the Reserve Account shall be transferred, not less than once each year, to the Bond Construction Trust Fund prior to completion of the Project and thereafter, to the Sinking Fund.

Any withdrawals from the Reserve Account which result in a reduction in the balance of the Reserve Account to below the Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments to the Sinking Fund for payment of debt service on the Primary Bonds have been made in full.

(5) The City shall not be required to make any further payments into the Sinking Fund or into the Reserve Account therein when the aggregate amount of funds in said Sinking Fund and said Reserve Account is at least equal to the aggregate principal amount of and interest on the Primary Bonds issued pursuant to this Ordinance then Outstanding.

(6) From the moneys remaining in the Revenue Fund, the City shall next, on the first day of each month, commencing the month succeeding the first full calendar month after completion of the Project, transfer to the Renewal and Replacement Fund a sum equal to 2-1/2% of the Gross Revenues each month, exclusive of payments for account of the Reserve Account in the Sinking Fund. 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 Article IX hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, or improvements or extensions to the System; provided, that any deficiency in the Reserve Account [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required by Subsection 4.03(A)(5)] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

(7) The City shall next, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Supplemental Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Supplemental Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Supplemental Bonds on the next ensuing principal payment date, with a credit to the deposit preceding the principal payment for any amounts already on deposit therein.

(8) The City shall next, on the first day of each month, commencing 13 months prior to the first date of payment of principal of the Supplemental Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Supplemental Reserve Account, an amount equal to 1/120th of the Supplemental Reserve Requirement; provided, that no further payments shall be made into the Supplemental Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Supplemental Reserve Requirement. If the City deposits the Supplemental Reserve Requirement in the Supplemental Reserve Account when the Supplemental Bonds are issued and delivered, then no monthly deposits are required unless the Supplemental Reserve Account is drawn upon and contains less than the Supplemental Reserve Requirement.

Moneys in the Supplemental Sinking Fund shall be used only for the purposes of paying principal of the Supplemental Bonds as the same shall become due. Moneys in the Supplemental Reserve Account in the Supplemental Sinking Fund shall be used only for the purpose of paying principal of the Supplemental Bonds, as the same shall come due, when other moneys in the Supplemental Sinking Fund are insufficient therefor, and for no other purpose. All investment earnings on moneys in the Supplemental Reserve Account shall be transferred, no less than once each year, to the Bond Construction Trust Fund prior to completion of the Project, and thereafter to the Supplemental Sinking Fund.

Any withdrawals from the Supplemental Reserve Account which result in a reduction in the balance of the Supplemental Reserve Account to below the Supplemental Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments prescribed above have been made in full.

B. As and when additional Bonds ranking on a parity with the Primary Bonds or the Supplemental Bonds are issued, provision shall be made for additional payments into the respective Sinking Fund sufficient to pay any interest on such additional Parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective Reserve Account in an amount equal to the respective Reserve Requirement.

The Commission is hereby designated as the fiscal agent for the administration of the respective Sinking Funds created hereunder, and all amounts required for said Sinking Funds shall be remitted to the Commission from the Revenue Fund by the City at the times provided herein.

The payments into the respective Sinking Funds shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Ordinance.

Moneys in the respective Reserve Accounts shall be invested and reinvested by the Commission in accordance with Article Nine hereof.

The respective Sinking Funds, including the respective Reserve Accounts therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the respective Bonds and any additional Bonds ranking on a parity with either thereof that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the respective Sinking Funds, including the Reserve Accounts therein, and the Renewal and Replacement Fund during the following month or such longer period as shall be required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenue"). Surplus Revenues may be used for any lawful purpose of the City.

D. The City shall remit from the Revenue Fund to Commission or the Depository Bank, on such dates as the Commission or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay any Depository Bank's charges and the Paying Agent fees then due.

E. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates.

G. All remittances made by the City to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

H. The Gross Revenues of the System shall only be used for purposes of the Systems.

Section 4.04. Excess Bond Proceeds. The City shall place any excess proceeds from Bonds not required by the Project in the Reserve Account.

Section 4.05. Rebate Fund. The City shall make or cause to be made the calculation(s) required by the Tax Reform Act and shall support such calculations with a letter from Independent Accountants verifying the accuracy of such calculations. The City shall direct the Depository Bank to make deposits and disbursements from the Rebate Fund in accordance with the Tax Reform Act and to invest the Rebate Fund pursuant to said Tax Reform Act and direction from the City and direct the Depository Bank to deposit income from such investments immediately upon receipt thereof in the Rebate Income Account. The immediately preceding sentence of this Ordinance and Sections 4.06 and 4.07 hereof may be superseded or amended by a resolution supplemental hereto adopted by the City and accompanied by an opinion of nationally recognized bond counsel addressed to the City to the effect that said supplemental resolution will not cause the interest on the Bonds to become taxable to the recipient thereof.

Section 4.06. Rebate Deposits. The City shall annually make or cause to be made the computation of the Rebate Deposit. If a deposit to the Rebate Principal Account is required as a result of such computation, the City shall notify the Depository Bank within fifteen (15) days of the end of the bond year that a payment is required and make such deposit. If a withdrawal from the Rebate Principal Account is permitted as a result of such computation, the City shall direct the Depository Bank to deposit the amount withdrawn in the Rebate Principal Account in the Revenue Fund for the benefit of the City. Records of the determinations required by this Section must be retained by the City until six (6) years after the Bonds are no longer outstanding.

Section 4.07. Rebate Disbursements. Not later than thirty (30) days after the end of the fifth Bond Year (five (5) years and thirty (30) days after the date of issuance) and every five (5) years thereafter, the City shall pay to the United States ninety percent (90%) of the amount required to be on deposit in the Rebate Principal Account as of such payment date and ninety percent (90%) of the amount on deposit in the Rebate Income Account as of such payment date. Not later than thirty (30) days after the final retirement of the Bonds, the

City shall direct the Depositing Bank to pay to the United States one hundred percent (100%) of the balance remaining in the Rebate Principal Account and the Rebate Income Account. Each payment required to be paid to the United States pursuant to this Section shall be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. The City shall provide with such direction a copy of the form originally filed with respect to the Bonds and a statement summarizing the determination of the amount to be paid to the United States.

ARTICLE V

APPLICATION OF ORIGINAL BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 5.01. Application of Original Bond Proceeds. The moneys received from the sale of any or all of the Original Bonds shall be deposited by the City in the Bond Construction Trust Fund or as set forth in the Supplemental Resolution.

Section 5.02. Bond Construction Trust Fund; Capitalized Interest Account. There is hereby created and established with the Depository Bank a special fund to be known as the "City of Elkins Bond Construction Trust Fund," which fund shall be kept separate and apart from all other funds of the City and used and applied by the City solely for the payment of the Costs of the Projects, and for no other purposes whatsoever. Unless alternative provisions are made in the Supplemental Resolution, the moneys in said fund shall be secured at all times by the deposit in such bank, as security, of direct obligations of the United States of America having a fair market value at least equal to the balance in said fund in excess of the amount insured by the FDIC. Any moneys not needed immediately for said purposes may, with the consent of the Consulting Engineers, be invested in Qualified Investments having maturities of not more than one year. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to, such purposes, then such unapplied proceeds shall be deposited by the City in the Sinking Funds established pursuant to this Ordinance and shall be used only as provided herein for said fund or as provided by supplemental resolution. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys until so applied in favor of the owners of the Original Bonds with the lien on behalf of the Supplemental Bond being subordinate to that of the Primary Bond.

Expenditures or disbursements from said Bond Construction Trust Fund, except for legal, fiscal and engineering expenses and expenses in connection with the issuance and sale of the Original Bonds, shall be made only

after such expenditures or disbursements shall have been approved in writing by the Sanitary Board and the Consulting Engineers.

ARTICLE VI

NOTES

Section 6.01. Authorization and General Terms. To the extent practicable and in order to pay certain Costs of the Project pending receipt of the Grant Receipts, the City shall issue and sell its Notes in the aggregate principal amount of not to exceed $5,000,000. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the Indenture and the Supplemental Resolution.

Section 6.02. Terms of and Security for Notes; Trust Indenture. The Notes shall be issued in fully registered form, in the denomination of $5,000 or any integral multiple thereof, with such terms and secured in the manner set forth in the Indenture to be approved by a Supplemental Resolution.

Section 6.03. Notes are Special Obligations. The Notes shall be special obligations of the City payable as to principal and interest solely from the respective sources described in the Granting Clauses and Article III of the Indenture. The Notes do not and shall not constitute a corporate indebtedness of the City within the meaning of any constitutional or statutory provisions or limitations. The general funds of the City are not liable, and neither the full faith and credit nor the taxing power of the City is pledged for the payment of the Notes. The Noteholders shall never have the right to compel the forfeiture of any property of the City. The Notes shall not be a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the City or upon any of its income, receipts or revenues except as set forth in the Indenture.

Section 6.04. Letters of Credit. As additional security for the Notes, the City may obtain a letter or letters of credit from a bank or banks, pursuant to which such bank or banks would agree to pay to the Trustee, upon presentation by the Trustee of certain certificates, the sum or sums set forth therein but not to exceed $1,000,000 in the aggregate. In the event of a draw under any such letter of credit, the City shall issue its refunding notes to the bank issuing such letter of credit. Any such letter of credit shall be authorized and shall have such terms as shall be set forth in a resolution supplemental hereto.

ARTICLE VII

LINE OF CREDIT

Section 7.01. Authorization of Line of Credit. As an alternative method of providing funds for the acquisition and construction of the Project to the extent grant proceeds and other funds are not available therefor, the Mayor of the City is hereby authorized and directed to arrange for a Line of Credit in an amount not to exceed $1,000,000. The amount and terms of the Line of Credit shall be approved by a resolution supplemental hereto.

Section 7.02. Authorization of Credit Line Note. For the purpose of evidencing any draw upon the Line of Credit and thus, of financing a portion of the cost of acquisition and construction of the Project, there shall be issued the Credit Line Note of the City in an amount and upon such terms as set forth in a resolution supplemental hereto. The Credit Line Note shall be issued in single, fully registered form and shall be dated as of the date of delivery thereof. There shall be attached to the Credit Line Note a Record of Advances and Payments, upon which the date and principal amount of any draw upon the Line of Credit, the date and amount of any payment of principal of the Credit Line Note and the amount of the Credit Line Note outstanding after either of said transactions shall be recorded. Anything to the contrary herein, in the Line of Credit Agreement or therein notwithstanding, the Credit Line Note shall evidence only the outstanding indebtedness recorded on the Record of Advances and Payments attached thereto, and interest shall accrue only on the amount if each advance from the actual date thereof as listed on said Record of Advances and Payments. Each such advance shall bear interest, payable monthly, at a rate set forth in a supplemental resolution but not to exceed 12 percent per annum. Interest shall cease to accrue on the amount of the Credit Line Note outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments. The Credit Line Note shall mature thirty (30) months from the date thereof. The Credit Line Note shall be subject to such further terms as shall be provided by the Line of Credit Agreement. Notwithstanding the foregoing, the terms of the Credit Line Note, other than the principal amount thereof, may be modified by resolution supplemental and amendatory hereto, subject to the limits of the Act.

The Credit Line Note shall be payable as to principal upon surrender at the principal office of a registrar, designated in a resolution supplemental hereto, in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the

laws of the United States of America; provided, that any partial payment or principal prior to the final maturity of the Credit Line Note shall be recorded on the Record of Advances and Payments attached to the Credit Line Note, and the Credit Line Note shall be returned to the Owner. Interest on the Credit Line Note shall be paid by check or draft mailed to the Owner thereof at the address as it appears on the books of said registrar; provided, that, at the option of the Owner, such payment may be made by wire transfer or such other method as shall be agreeable to the Owner, the City, the Commission and said registrar.

Section 7.03. Execution of Credit Line Note. The Credit Line Note shall be executed in the name of the City by the signature of its Mayor, and the seal of the City shall be affixed thereto and attested by the signature of the City Clerk. Any Credit Line Note may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Credit Line Note shall hold the proper office of the City, although at the date of such Credit Line Note such person may not have held such office or may not have been so authorized.

Section 7.04. Negotiability, Transfer and Registration. Subject to the restrictions on transfer set forth below, the Credit Line Note shall be and have all of the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State, and each successive Owner, in accepting the Credit Line Note, shall be conclusively deemed to have agreed that said Credit Line Note shall be incontestable in the hands of a bona fide holder for value.

So long as the Credit Line Note or any portion thereof remains Outstanding, the registrar shall keep and maintain books for the registration and transfer of the Credit Line Note. The Credit Line Note shall be transferable only upon the books of the City which shall be kept for that purpose at the office of the registrar (in such capacity and in the capacities of authenticating agent and paying agent as hereinafter provided, the "Registrar") by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Credit Line Note, there shall be issued at the option of the Owner or the transferee another Credit Line Note or Notes of the aggregate stated principal amount equal to the stated principal amount of such transferred Credit Line Note not paid as reflected on the Record of Advances and Payments attached thereto and outstanding in the aggregate principal amount equal to the advanced but unpaid amount of the transferred Note as reflected on the Record of Advances and Payments attached thereto.

In all cases in which the privilege of transferring the Credit Line Note is exercised, Credit Line Notes shall only be issued in accordance with the provisions of this Ordinance and the Supplemental Resolution. All Credit Line Notes surrendered in any such transfers shall forthwith be cancelled by the Registrar. For every such transfer of Credit Line Notes, the Registrar may make a change sufficient to reimburse its office for any tax, fee or other governmental charge required to be paid with respect to such transfer and the cost of preparing each Credit Line Note upon each transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of making such transfer. The Registrar shall not be obliged to make any such transfer of Credit Line Notes during the ten (10) days preceding an interest payment date on the Credit Line Notes or after notice of any prepayment of the Credit Line Notes has been given.

Section 7.05. Form of Credit Line Note. The text of the Credit Line Note shall be in substantially the form attached as Exhibit II to the Line of Credit Agreement, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any supplemental resolution or ordinance adopted or enacted prior to the issuance thereof. The Credit Line Note shall not become valid until authenticated by the Registrar.

ARTICLE VIII

ADDITIONAL COVENANTS OF THE CITY

Section 8.01. General Covenants of the City. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the City and shall be enforceable in any court of competent jurisdiction by any owner or owners of the Bonds. In addition to the other covenants, agreements and provisions of this Ordinance, the City hereby covenants and agrees with the owners of the Bonds as hereinafter provided in this Article VIII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds, or the interest thereon, is outstanding and unpaid.

Section 8.02. Bonds Not To Be Indebtedness of the City. The Bonds shall not be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the revenues of the System, or from the respective Reserve Account, as herein provided. No owner or owners of any Bonds

issued hereunder shall ever have the right to compel the exercise of the taxing power of the City to pay said Bonds or the interest thereon.

Section 8.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all of the Primary Bonds issued hereunder shall be secured forthwith equally and ratably by a lien on the Net Revenues derived from the operation of the System, and payment of the debt service of the Supplemental Bonds issued hereunder shall be secured forthwith equally and relatively by a lien on said Net Revenues, but such lien shall be junior and subordinate to the lien on said Net Revenues in favor of the owners of the Primary Bonds, to the extent necessary to make the payments required under Section 4.03 of this Ordinance. The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized, and to make the payments into the respective Sinking Funds, including the Reserve Accounts therein, and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the principal of and any interest on the Bonds herein authorized as the same become due and for the other purposes provided in this Ordinance.

Section 8.04. Rates. Prior to issuance of the Original Bonds, equitable rates or charges for the use of and service rendered by the System will be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times to be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. The City shall take the necessary actions with respect to the imposition of rates at such times and with such provisions with respect to interest rate and maturity of the Bonds to finance the issuance of the Bonds as the purchaser thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the City hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Primary Bonds and the Supplemental Bonds; provided that, in the event that an

amount at least equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account and an amount at least equal to the Supplemental Reserve Requirement is on deposit in the Supplemental Reserve Account, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds.

Section 8.05. Completion, Operation and Maintenance. The City will expeditiously complete the Project and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said System in the manner provided in this Ordinance.

Section 8.06. Sale of the System. The System may be sold, mortgaged, leased, or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient fully to pay or redeem at or prior to maturity all the Bonds outstanding. The proceeds from such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the appropriate Sinking Funds, and the City shall direct the Commission to apply such proceeds to the payment of principal and any interest at maturity of Bonds about to mature and to the redemption prior to maturity, at the earliest date permitted hereby and at the redemption price, of all other outstanding Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be remitted to the City by the Commission unless necessary for the payment of other obligations of the City payable out of the revenues of the System.

The foregoing provision notwithstanding, the City shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of ten thousand dollars ($10,000), the City shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Council may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of $10,000 but not in excess of $50,000, the Council shall first, in writing, determine with the written approval of the

Consulting Engineer that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the City Council may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, in excess of $10,000 and not in excess of $50,000, shall be remitted by the City to the Commission for deposit in the appropriate Sinking Funds and shall be applied only to the redemption of Bonds of the last maturities then outstanding or to the purchase of Bonds of the last maturities then outstanding at prices not greater than the redemption price of such Bonds. Such payments of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance.

No sale, lease or other disposition of the properties of the System shall be made by the City if the proceeds to be derived therefrom shall be in excess of fifty thousand dollars ($50,000) and insufficient to pay or redeem prior to maturity all the Bonds then outstanding without the prior approval and consent in writing of the owners, or their duly authorized representatives, of sixty-six and two-thirds percent (66-2/3%) in amount of the Bonds then outstanding. The City shall prepare the form of such approval and consent for execution by the then owners of the Bonds, for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 8.07. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances. The City shall not issue any other obligations whatsoever, except pari passu additional Bonds provided for in Section 8.08 hereof, payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Supplemental Bonds or, if no Supplemental Bonds are outstanding, with the Primary Bonds; provided, however, that additional Parity Bonds may be issued as provided in Section 8.08 hereafter. All obligations hereafter issued by the City payable from the revenues of the System, except such additional Parity Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds to the extent such are outstanding; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the respective Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the City shall not create, or cause or permit to be created any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to said pari passu additional Bonds, being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance or upon the System or any part thereof.

Section 8.08. Parity Bonds. No Parity Bonds payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided.

No Parity Bonds shall be issued so long as any Supplemental Bonds are outstanding. No Parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of extensions, additions, betterments or improvements to the System or refunding the entirety of one or more issues or series of Bonds or both such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by Independent Accountants, based upon the necessary investigation and certification by the Consulting Engineer, reciting the conclusion that the net revenues actually derived, subject to the adjustments hereinafter provided, from the System during any twelve (12) consecutive months within the eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual net revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such additional parity Bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt source in any succeeding year on the following:

(1) The Original Bonds then Outstanding;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual net revenues to be received in each of the three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased net revenues estimated to be derived from any increase in rates enacted by

the City, the time for appeal of which shall have expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineer, which shall be filed in the office of the City Clerk prior to the issuance of such additional Parity Bonds.

The Net Revenues actually derived from the System during the twelve (12) consecutive month period hereinabove referred to may be adjusted by adding to such net revenues such additional net revenues which would have been received, in the opinion of the Consulting Engineer and the Independent Accountants as stated in a certificate jointly made and signed by the Consulting Engineer and the Independent Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the City, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the City shall have entered into written contracts for the immediate acquisition or construction of such extensions, additions, betterments or improvements to the System which are to be financed by such Parity Bonds.

All the covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the owners of the Primary Bonds and the owners of any Parity Bonds and the owners of the Supplemental Bonds and the Parity Supplemental Bonds subsequently issued from time to time within the limitations of and in compliance with this Section. All the Primary Bonds, regardless of the time or times of their issuance, and all the Supplemental Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their respective liens on the revenues of the System, and their respective sources of and security for payment from said revenues, without preference of any Primary Bond over any other or any Supplemental Bond over any other. The City shall comply fully with all the increased payments into the various funds created in this Ordinance required for and on account of such additional Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the outstanding Primary Bonds and Supplemental Bonds on such revenues.

Parity Bonds shall be not issued at any time, however, unless all the payments into the respective funds and accounts provided for in this Ordinance on account of the Bonds then

outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of delivery of the Parity Bonds.

Notwithstanding the foregoing, the City may issue Parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any issues or series of the Bonds, provided that the annual debt service required on account of the refunding Bonds and the Bonds which are not refunded shall not be greater in any year in which the Bonds not refunded and the refunding Bonds are to be outstanding than the annual debt service required in such year if the Bonds to be refunded were not so refunded.

With the written consent in advance of the Authority and anything to the contrary in this Section 8.08 notwithstanding, Parity Bonds may be authorized and issued by the City pursuant to a Supplemental Resolution solely to complete the Project as described in the City's Program application to the Authority accordance with the plans and specifications, in the event that the Original Bonds should be insufficient, together with other funds lawfully available therefor, to pay all costs of acquisition and construction of the Project; provided, however, that, prior to the issuance of such Parity Bonds under the provisions of this paragraph, the Consulting Engineers shall file with the City Clerk a certificate to the effect that additional funds are necessary for such purpose. All such Parity Bonds authorized and issued under the provisions of this paragraph shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of the construction costs to complete the Project, and the maturities of any such Parity Bonds shall be in years and amounts suggested by the Authority.

As long as any Supplemental Bonds are outstanding, the City may issue Parity Supplemental Bonds upon satisfaction of the tests set forth above and taking into consideration all debt service requirements on all bonds superior to the Supplemental Bonds, the Supplemental Bonds and including the proposed Parity Supplemental Bonds.

Section 8.09. Insurance. The City will carry such insurance and in such amounts as is customarily carried with respect to works and properties similar to the System, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. 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 placed in the Renewal and Replacement Fund and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement

Fund. The City will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the System. The City shall carry such other insurance as is required by the Authority.

Section 8.10. Consulting Engineers. The City may retain recognized, qualified independent Consulting Engineers on an annual basis to supervise generally the operation, maintenance and repair of the System and to report annually to the City in writing their recommendations and comments as to the System.

Section 8.11. Services Rendered to the City. The City will not render or cause to be rendered any free services of any nature by its System; and, in the event the City or any department, agency, instrumentality, officer or employee of the City shall avail itself or himself or herself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the City and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the City shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 8.12. Enforcement of Collections. The City will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System and take all steps, actions and proceedings for the enforcement and collection of such fees, rates, rentals or other charges that shall become delinquent to the full extent permitted or authorized by the laws of the State of West Virginia. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services or facilities of the System, shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. The City further covenants and agrees that it will, to the full extent permitted by law, and any rules and regulations promulgated by the Public Service Commission of West Virginia applicable thereto, discontinue and shut off both the water and sewerage services and facilities of the System to all delinquent users of the services and facilities of the System, or sewerage

system constituting a part thereof, and will not restore either water or sewerage services of the System until all delinquent charges for the service and facilities of the System, or of the waterworks system or sewerage system constituting a part thereof, plus reasonable interest penalty charges for the restoration of service, have been fully paid.

Section 8.13. No Competing Franchise. To the extent allowable by law, the City will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 8.14. Books and Records. The City will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the System, and any owner of a Bond or Bonds issued pursuant to this Ordinance shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the City relating thereto.

The accounting system for the System shall follow currently accepted accounting practices in accordance with the rules and regulations of the PSC 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 Consulting Engineer and the Authority, and shall mail in each year to any owner or owners of Bonds requesting the same, an annual report containing the following:

A. A statement of Gross Revenues, Operating Expenses and Net Revenues derived from the System.

B. A balance sheet statement showing all deposits in all the funds and accounts provided for in this Ordinance, and the status of all said funds.

The City shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by Independent Accountants, shall mail upon request, and make available generally, the report of said Independent

Accountants, or a summary thereof, to any owner or owners of Bonds issued pursuant to this Ordinance, and shall submit said report the Authority. The report of said audit shall include a statement that the City is in compliance with the terms and provisions of the WDA Loan Agreements and this Ordinance.

Section 8.15. Initial Schedule of Rates. The rates, fees and other charges for the use of the services and facilities of the System established under an ordinance of the City enacted on or before the date of the adoption or enactment of a resolution or ordinance adopted or enacted in connection with the sale of the Bonds as provided herein shall constitute the initial schedule of rates for said System for purposes of this Ordinance.

Section 8.16. Operating Budget. The Board shall annually, at least forty-five (45) days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed budget of the estimated expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the City Council shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of ten percent (10%) of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The City shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to any Bondholder who requests in writing that copies of all such budgets and resolutions be furnished him or her, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Bondholder or anyone acting for and in behalf of such Bondholder.

Section 8.17. Connection. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, prospective users of the System shall be required to connect thereto.

Section 8.18. Covenant to Amend Ordinance. The City shall amend this Ordinance by a resolution supplemental hereto to comply with the Tax Reform Act, as enacted by the Congress of the United States and signed by the President, if terms of the law as enacted conflict with the terms hereof. The Council

of the City hereby retains the specific authority to amend this Ordinance or supplement it by resolution prior to the sale of the Bonds to comply with related federal legislation. In its determination to amend or supplement this Ordinance, the City may rely on the opinion of nationally recognized bond counsel.

Section 8.19. Essential Governmental Function Bonds. The City shall use the Bond proceeds solely for the Project and such Project will be solely operated as govermental function. The City shall not allow ten percent (10%) or more of the gross proceeds of the Bonds to be used either directly or indirectly in any trade or business carried on by any person other than a governmental unit and shall not take any other action which would make the Bonds nonessential function bonds within the meaning of the Tax Reform Act. This covenant may be amended by a resolution supplemental hereto if the Tax Reform Act is not enacted by the Congress of the United States or if the Council receives an opinion of nationally recognized bond counsel to the effect that such covenant is not required to maintain the tax-exempt status of the Bonds.

Section 8.20. Expenditure of Bond Proceeds. The City shall expend five percent (5%) of the proceeds of the Bonds within thirty (30) days from the date of issuance of the Bonds and shall expend all remaining proceeds (other than reasonable bond reserves) within the earlier of the substantial completion of the Project or three (3) years of the date of issuance of the Bonds.

Section 8.21. Bond Reporting Requirements. The City shall make and file such reports as required by the Tax Reform Act or such other federal legislation as is enacted by the Congress of the United States.

ARTICLE IX

INVESTMENT OF FUNDS

Section 9.01. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, or 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 need for such moneys for the purposes set forth herein and the specified restrictions and provisions set forth in this Section 9.01 and in Sections 9.03 and 9.04.

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 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. Such other bank or national banking association may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Section 9.02. Restrictions as to Arbitrage Bonds. The City shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the City to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any Bond to be an "arbitrage bond" as defined in Section 103(c)(2) of the Internal Revenue Code of 1954, as amended, and as set forth in the Tax Reform Act or the rules and regulations promulgated pursuant thereto, and the Mayor of the City shall deliver his certificate, based upon this covenant, with regard thereto to the purchaser of the Original Bonds.

Section 9.03. Restriction of Yield on Bond Proceeds. The City shall restrict the investment yield on all Bond proceeds designated for acquisition of tangible property as set forth in the Certificate as to Non-Arbitrage, including land, buildings, equipment and furnishings, to the Bond yield beginning thirty (30) days from the date the Bonds are issued. The City shall restrict the investment yield on all Bond proceeds designated for construction of the Project as set forth in the Certificate as to Non-Arbitrage to the earliest of (a) substantial completion of the Project; (b) expenditure of funds from any source equal to the Bond proceeds; (c) three (3) years after date of issuance of the bonds; or (d) three (3) years after commencement of construction. For the purposes of this Section, yield does not include cost of issuance expenses or any discount. After the temporary periods set forth above all proceeds must be yield restricted. The yield on funds placed in the Renewal and Replacement Fund must be restricted if the fund exceeds fifteen percent (15%) of the bond issue or if the fund contains nonpurpose obligations with a yield in excess of one hundred fifty percent (150%) of the principal and

interest due during the bond year. This Section may be amended by a resolution supplemental hereto if the Tax Reform Act is not enacted by the Congress of the United States or if the Council receives an opinion of nationally recognized bond counsel to the effect that such covenant is not required to maintain the tax-exempt status of the Bonds.

Section 9.04. Investment Restrictions. The City shall not invest the proceeds of the Bonds in any account, certificate or fund which is either directly or indirectly guaranteed by the United States of America and which deposit would violate the provisions of the Tax Reform Act. The City may invest the funds in the Sinking Fund and the Renewal and Replacement Fund in federally insured deposits or accounts. This covenant may be amended by a resolution supplemental hereto if the Tax Reform Act is not enacted by the Congress of the United States or if the Council receives an opinion of nationally recognized bond counsel to the effect that such covenant is not required to maintain the tax-exempt status of the Bonds.

ARTICLE X

DEFAULT AND REMEDIES

Section 10.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Primary Bonds or the Supplemental Bonds as the case maybe:

(A) If default occurs in the due and punctual payment of the principal of or interest on any such Bonds; or

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part relating to such Bonds set forth in this Ordinance, any supplemental resolution, or in such 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 any bank or banking association holding any fund or account hereunder or a owner of such Bonds; or

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 10.02. Remedies. Upon the happening and continuance of any Event of Default with respect to any Primary Bonds or Supplemental Bonds, as the case may be, any Registered Owner of such Bond may exercise any available remedy and bring

any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such registered Owners including the right to require the City to perform its duties under the Act and the Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon such 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 such Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Ordinance with respect to such Bonds, or the rights of such registered Owners.

Section 10.03. Appointment of Receiver. Any Bondholder may, by proper legal action, compel the performance of the duties of the City under this Ordinance and the Act, including the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any default in the payment of interest on any Primary Bonds when the same shall become due, or in the payment of the principal of any Bond or Bonds, either at the specified date of maturity thereof or at a date set for redemption thereof, or otherwise in the performance of any covenant contained in this Ordinance other than as to such payment and such default shall continue for a period of thirty (30) days after written notice to the City of such default, any Bondholder shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the City, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and any interest thereon, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Ordinance and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate, maintain, manage and control such facilities, and each and every part thereof, and in the name of the City exercise all the rights and powers of the City with respect to said facilities as the City itself might do.

Whenever all that is due upon the Bonds issued pursuant to this Ordinance and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and upon any other obligations and interest thereon having a

charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the City upon the entry of an order of the court to that effect. Upon any subsequent default, any owner of Bonds issued pursuant to this Ordinance shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her, 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 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 owners of Bonds issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the City and Bondholders, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System. The provisions of this section shall be subject to the senior rights of the Primary Bonds over the Supplemental Bonds.

ARTICLE XI

DEFEASANCE

Section 11.01. Defeasance of Primary Bonds. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the owners of all Primary 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 with respect to the Primary Bonds only, the pledge of Net Revenues and any other moneys and

securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the Bondholders of the Primary Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Primary Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay, as and when due, the principal of and interest on the Primary Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section. All Primary Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the affect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agents, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments and interest due and to become due on said Primary Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this Section nor principal or interest payments on any such securities shall be withdrawn or used for any purposes other than, and shall be held in trust for, the payment of the principal of and redemption premium, if applicable, on and interest on said Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and redemption premium, if applicable, on and interest to become due on said Primary Bonds on and prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the City, as received by the Commission, free and clear of any trust, lien or pledge. For the purpose of this Section, securities shall mean and include only Government Obligations.

Section 11.02. Defeasance of Supplemental Bonds. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the respective Owners of all Supplemental Bonds, the principal thereof, at the times and in the manner stipulated therein and in this Ordinance, then with respect to the Supplemental Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the City to the registered Owners of the Supplemental Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Supplemental Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the principal installments of such Supplemental Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Supplemental Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of said Supplemental Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of said Supplemental Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of said Supplemental Bonds on and prior to the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the City as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Modification or Amendment. No material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto which would materially and adversely affect the rights of Bondholders shall be made without the consent in writing of the owners of two-thirds (2/3) or more in principal amount 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 Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the City to pay such principal and

interest out of the revenues of the System without the consent of the 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.

Section 12.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 12.03. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, in conflict with this Ordinance are to the extent of such conflict repealed.

Section 12.04. 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 City Council were at all times when any actions in connection with this Ordinance occurred, and are, duly in office and duly qualified for such office.

Section 12.05. Effective Date. This Ordinance shall take effect after passage, public hearing and otherwise in the manner prescribed by law.

First Reading: February 6, 1986

Second Reading and Passage: February 20, 1986

Public Hearing: March 13, 1986

CITY OF ELKINS, WEST VIRGINIA

By: _____
Mayor

[SEAL]

_____
Clerk

EXHIBIT A

Project Description

The Project consists of the construction of a 2.3 MGD oxidation ditch; construction of a new pump station at the existing treatment plant site to pump wastewater to the new facility; renovation of the Glendale station that currently pumps wastewater flow to the existing plant to increase reliability; renovation of 14 regulator/diversion manholes to reduce the inflow into the System; and upgrading the pump stations in the System as well as related construction activity.

Supplemental Resolution

Introduced in Council:

April 17, 1986

Adopted by Council:

April 17, 1986

Introduced by:

Councilwoman Margaret Hutton

SUPPLEMENTAL RESOLUTION PROVIDING AS TO DATES, MATURITIES, INTEREST RATES, PRINCIPAL PAYMENT SCHEDULES, SALE PRICES, AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 1986, AND SUPPLEMENTAL SUBORDINATE SEWER REVENUE BONDS, SERIES 1986, OF THE CITY OF ELKINS; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Common Council of the City of Elkins, West Virginia (the "City") has duly and officially enacted an Ordinance on February 20, 1986, effective March 13, 1986 (the "Ordinance"), entitled:

An Ordinance authorizing the acquisition and construction of certain extensions, additions, betterments and improvements to the existing public sewerage facilities of the City of Elkins; authorizing the issuance of not more than $1,200,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1986, and not more than $600,000 in aggregate principal amount of Supplemental Subordinate Sewer Revenue Bonds, Series 1986, of said City of Elkins to be used, along with other funds and moneys of, or available to, the City of Elkins which may be lawfully expended for such purposes, to finance the cost of such acquisition and construction and if determined by supplemental resolution, to fund reserve accounts for such bonds and to pay other costs in connection therewith; authorizing the issuance of not more than $5,000,000 in aggregate principal amount of City of Elkins

Sewerage System Grant Anticipation Notes, Series 1986; authorizing an irrevocable line of credit in an amount not to exceed $1,000,000 to provide funds for such acquisition and construction to the extent grant proceeds or other funds are not available therefor, and authorizing an agreement with respect to said line of credit; providing for the rights and remedies of and security for the owners of such bonds; and adopting other provisions related thereto.

WHEREAS, the Ordinance provides for the issuance of Sewer Revenue Bonds, Series 1986 (the "Primary Bonds"), and the Supplemental Subordinate Sewer Revenue Bonds, Series 1986 (the "Supplemental Bonds") (collectively herein the "Bonds") of the City of Elkins (the "City") in aggregate principal amounts not to exceed $1,200,000 and $600,000 respectively, all in accordance with Chapter 16, Article 13, of the Code of West Virginia, 1931, as amended, (the "Act"), and the terms of the Loan Agreement and Supplemental Loan Agreement (the "Loan Agreement") entered into between the City and the West Virginia Water Development Authority (the "Authority"), and in the Ordinance it is provided that the dates, interest rates, maturities, sale prices and other terms of the Bonds should be established by a supplemental resolution and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Council of the City of Elkins (the "Council") deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the prices,

the maturity dates, the redemption provisions, the interest rates, and the interest and principal dates of the Bonds be fixed hereby in the manner stated herein; and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF ELKINS:

Section 1. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 1986, in the aggregate principal amount of $1,037,970 (the "Primary Bonds"), and the Supplemental Subordinate Sewer Revenue Bonds, Series 1986 (the "Supplemental Bonds") in the aggregate principal amount of $517,001, all in the form set forth below and in the Ordinance:

(A) The Primary Bonds of the City shall be originally issued in the form of a single Bond, numbered R-1, in the principal amount of $1,037,970. The Primary Bonds shall be dated the date of delivery thereof, shall bear interest at the rate of 9.75% per annum, payable semiannually on April 1 and October 1 of each year, first interest payable October 1, 1986, shall be subject to redemption upon the written consent of the Authority, and upon payment of the interest and redemption premium, if any, and subject to the other requirements provided in the Loan Agreement, as long as the Authority shall be the registered owner of the Primary Bonds, and shall be payable in installments of principal on October 1

of each of the years from 1986 through 2025, inclusive, and in the amounts as set forth in "Schedule X," attached to the Loan Agreement and incorporated therein by reference.

(B) The Supplemental Bonds of the City shall be originally issued in the form of a single Bond, numbered SR-1, in the principal amount of $517,001. The Supplemental Bonds shall be dated the date of delivery thereof, shall be interest free, shall be subject to redemption upon the written consent of the Authority as long as the Authority shall be the registered owner of the Supplemental Bonds, and shall be payable in installments of principal on October 1 of each of the years from 1986 through 2025, inclusive, and in the amounts as set forth in "Schedule X," attached to the Loan Agreement and incorporated therein by reference.

Section 2. All other provisions relating to the Bonds shall be as provided in the Ordinance, and the Bonds shall be in substantially the form provided in the Ordinance with such changes, insertions and omissions as may be approved by the Mayor of the City. The execution of the Bonds by the Mayor shall be conclusive evidence of such approval.

Section 3. The City does hereby ratify, approve and accept the Loan Agreement and the Supplemental Loan Agreement, including the "Schedule X" attached to each, copies of which are incorporated herein by reference, and the execution and delivery by the Mayor of the Loan Agreement and the Supplemental Loan Agreement, and the performance of the

obligations contained therein, on behalf of the City have been and are hereby authorized, approved and directed. The price of the Bonds shall be 100% of par value.

Section 4. The City hereby appoints and designates Citizens National Bank of Elkins, Elkins, West Virginia, as the Depository Bank, as provided in the Ordinance.

Section 5. The City hereby appoints and designates Kanawha Valley Bank, N.A., Charleston, West Virginia, as Registrar and Paying Agent for the Bonds and reserves the right to appoint such other bank or other entity or entities as the City may approve by supplemental resolution with the approval of the Authority and notice to said Kanawha Valley Bank, N.A.

Section 6. The City hereby authorizes and directs the Mayor and Clerk to enter into a line of credit agreement not to exceed $1,000,000 with a banking corporation or association and to take any and all action necessary to insure that funds are available to make payments pending the EPA grant revenues.

Section 7. The City hereby directs that no proceeds of the Bonds be placed in the Reserve Accounts created under the Ordinance and directs that the Reserve Accounts be funded from net revenues as provided in the Ordinance.

Section 8. The Mayor and Clerk are hereby authorized and directed to execute and deliver such other documents and certificates, including the Registrar's Agreement, required or desirable in connection with the Bonds hereby and by the Ordinance approved and provided for, to the end that the Bonds

may be delivered on or about April 28, 1986, to the Authority pursuant to the Loan Agreement and the Supplemental Loan Agreement.

Section 9. The financing of the Project in part with proceeds of the Bonds is in the public interest, serves a public purpose of the City and will promote the health, welfare and safety of the residents of the City.

Section 10. This Supplemental Resolution shall be effective immediately upon adoption.

CITY OF ELKINS

Mayor

[SEAL]

Clerk

THE CITY OF ELKINS

SEWER REVENUE BONDS, SERIES 1996 A
(WEST VIRGINIA SRF PROGRAM)

BOND ORDINANCE

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THE CITY OF ELKINS

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF ELKINS AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $300,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1996 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF ELKINS:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation"), supplemental to the Prior Ordinance (as hereinafter defined), is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Elkins (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and

improvements to the existing public sewerage system of the Issuer, consisting of a lime silo storage system, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (the existing public sewerage facilities of the Issuer, the Project and any further additions thereto or extensions thereof are herein called the "System") at an estimated cost of not to exceed $344,000, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the City Clerk of the Issuer.

C. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Prior Bonds and the Series 1996 A Bonds and to make all payments into all Sinking Funds, Reserve Accounts and other payments provided for herein and in the Prior Ordinance, all as such terms are hereinafter defined.

D. The Issuer intends to permanently finance the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund program (the "SRF Program"), pursuant to the Act, in order to take advantage of the favorable terms available to the Issuer under the SRF Program.

E. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program) (the "Series 1996 A Bonds"), in the total aggregate principal amount of not more than $300,000, initially to be represented by a single bond, to permanently finance the costs of acquisition and construction of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Series 1996 A Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction or acquisition of the Project; amounts which may be deposited in the Series 1996 A Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; fees and expenses of the Authority, including the SRF Administrative Fee (as hereinafter defined); discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 1996 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the acquisition or construction of the Project and the placing of same in operation; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the

issuance of the Series 1996 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

F. The period of usefulness of the System after completion of the Project is not less than 20 years.

G. It is in the best interests of the Issuer that its Series 1996 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and among the Issuer, the Authority and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment (the "DEP"), in form satisfactory to the Issuer, the Authority and the DEP (the "Loan Agreement"), approved hereby if not previously approved by resolution of the Issuer.

H. There are outstanding obligations of the Issuer which will rank either on a parity with or junior and subordinate to the Series 1996 A Bonds as to liens, pledge, source of and security for payment, which obligations are designated and have the lien positions with respect to the Series 1996 A Bonds as follows:

Designation	Lien Position
Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original aggregate principal amount of $1,037,970 (the "Series 1986 Primary Bond");	First Lien
Supplemental Subordinate Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original aggregate principal amount of $517,001 (the "Series 1986 Supplemental Bond");	Second Lien

The Series 1986 Primary Bond and the Series 1986 Supplemental Bond are hereinafter collectively called the "Prior Bonds". The ordinance which authorized the issuance of the Prior Bonds is herein referred to as the "Prior Ordinance".

The Series 1996 A Bonds shall be issued on a parity with the Series 1986 Primary Bond, and senior and prior to the Series 1986 Supplemental Bond with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has met the coverage requirements for issuance of parity bonds of the Series 1986 Primary Bond and the Prior Ordinance and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature. The Issuer has obtained the consent of the Holder of the Series 1986 Primary Bond to the issuance of the Series 1996 A Bonds on a parity

with the Series 1986 Primary Bond. The Issuer has also obtained the consent of the Holder of the Series 1986 Supplemental Bond to the issuance of the Series 1996 A Bonds senior and prior to the Series 1986 Supplemental Bond.

Other than the Prior Bonds, there are no outstanding obligations of the Issuer which will rank prior to or on a parity with the Series 1996 A Bonds as to liens, pledge and/or source of and security for payment or in any other respects.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 1996 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the obtaining of a certificate of public convenience and necessity, from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 1996 A Bonds or such final order will not be subject to appeal.

J. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Council to issue the Series 1996 A Bonds for the purposes set forth herein.

K. The Issuer is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the Net Proceeds of the Series 1996 A Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and the Issuer, all subordinate entities, all entities which issue obligations on behalf of the Issuer, and all entities formed or, to the extent provided under Section 148 of the Code, herein defined, availed of, to avoid the purposes of Section 148(f)(4)(D) of the Code and all other entities benefiting thereby, reasonably expect to issue less than $5,000,000 aggregate principal amount of tax-exempt obligations (other than private activity bonds) during the calendar year in which the Series 1996 A Bonds are to be issued.

L. The Project has been approved by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended, or is grandfathered from review thereby.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of Series 1996 A Bonds by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 1996 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond

of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 1996 A Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Board" means the Sanitary Board of the Issuer.

"Bond Construction Trust Fund" means the Bond Construction Trust Fund established by Section 5.01 hereof.

"Bondholder," "Holder of the Bonds," "Holder," "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means, collectively, the Series 1996 A Bonds, the Series 1986 Primary Bond, and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"City Clerk" means the City Clerk of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 1996 A Bonds for the proceeds or at least a de minimis portion thereof representing the purchase price of the Series 1996 A Bonds from the Authority and the DEP.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Completion Date" means the completion date of the Project, as defined in the SRF Regulations.

"Consulting Engineers" means Kelley Gidley Blair & Wolfe, Inc., Charleston, West Virginia, or any qualified engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System or portion thereof; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02E hereof to be a part of the cost of acquisition and construction of the Project.

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

"DEP" means the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment, or any other agency, board or department of the State that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Council of the Issuer, as it may now or hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America, (ii) evidences of ownership of a proportionate interest in specified direct

obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

"Gross Revenues" shall mean the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined) or any Tap Fees, as hereinafter defined, and for the furnishing by the Issuer of miscellaneous service.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Issuer" means The City of Elkins, a municipal corporation and political subdivision of the State of West Virginia, in Randolph County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body and the Sanitary Board of the Issuer.

"Loan Agreement" means the Loan Agreement, heretofore entered, or to be entered, into by and among the Authority, the DEP and the Issuer, providing for the purchase of the Series 1996 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified, by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 1996 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 1996 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 1996 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues remaining after deduction of Operating Expenses, as hereinafter defined.

"Nonpurpose Investment" means any Investment Property which is acquired with the gross proceeds or any other proceeds of the Series 1996 A Bonds and is not acquired in order to carry out the governmental purpose of the Series 1996 A Bonds.

"Operating Expenses" shall mean the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and Paying Agent (all as hereinafter defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Series 1996 A Bonds or the Series 1986 Primary Bond or the principal of the Series 1986 Supplemental Bond, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Operation and Maintenance Fund" means the Operation and Maintenance Fund established by the Prior Ordinance and continued hereby.

"Outstanding," when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds, for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid; and (v) for purposes of consents or other action by a specified

percentage of Bondholders, or holders of Prior Bonds, any Bonds or Prior Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or other entity or authority designated as such for the Series 1996 A Bonds in the Supplemental Resolution with the written consent of the Authority and the DEP.

"Prior Bonds" means, collectively, the Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original aggregate principal amount of $1,037,970, and the Supplemental Subordinate Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original aggregate principal amount of $517,001.

"Prior Ordinance" means, collectively, the ordinance of the Issuer enacted March 13, 1986, as supplemented by the supplemental resolution of the Issuer adopted April 17, 1986, authorizing the issuance of the Series 1986 Primary Bond and the Series 1986 Supplemental Bond.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Project" means the acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer, consisting of a lime silo storage system, together will all appurtenant facilities.

"Qualified Investments" means and includes any of the following:

(a) Government Obligations;

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

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

have) possession of such collateral; and such collateral must be free of all claims by third parties;

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

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

"Recording Officer", "Recorder" or "City Clerk" means the City Clerk of the Issuer.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond is registered.

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor to the Code.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Ordinance and continued hereby.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Prior Bonds and the Series 1996 A Bonds.

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in any reserve account for the Prior Bonds and the Series 1996 A Bonds.

"Revenue Fund" means the Revenue Fund created by the Prior Ordinance and continued hereby.

"Series 1986 Primary Bond" means the Issuer's Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original principal amount of $1,037,970.

"Series 1986 Primary Bond Reserve Account" means the Reserve Account established for the Series 1986 Primary Bond in the Prior Ordinance.

"Series 1986 Primary Bond Sinking Fund" means the Sinking Fund established for the Series 1986 Primary Bond in the Prior Ordinance.

"Series 1986 Supplemental Bond" means the Issuer's Supplemental Subordinate Sewer Revenue Bond, Series 1986, dated April 28, 1986, issued in the original principal amount of $517,001.

"Series 1986 Supplemental Bond Reserve Account" means the Supplemental Reserve Account established for the Series 1986 Supplemental Bond in the Prior Ordinance.

"Series 1986 Supplemental Bond Sinking Fund" means the Supplemental Sinking Fund established for the Series 1986 Supplemental Bond in the Prior Ordinance.

"Series 1996 A Bonds" means the not more than $300,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), of the Issuer.

"Series 1996 A Bonds Reserve Account" means the Series 1996 A Bonds Reserve Account established in the Series 1996 A Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1996 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1996 A Bonds in the then current or any succeeding year.

"Series 1996 A Bonds Sinking Fund" means the Series 1996 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective sinking funds established for the Prior Bonds and the Series 1996 A Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

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

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 1996 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 1996 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Series 1996 A Bonds, the Prior Bonds or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund and the respective Reserve Accounts.

"System" means the complete existing public sewerage system now owned by the Issuer, consisting of a sewage treatment system, and shall include the Project and any further extensions, additions, betterments and improvements thereto hereafter acquired or constructed for said sewer system from any sources whatsoever, both within and without the Issuer.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

Additional terms and phrases are defined in this Ordinance as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed $344,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 1996 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the SRF Program.

The cost of the Project is estimated not to exceed $344,000, of which $300,000 will be obtained from proceeds of the Series 1996 A Bonds and $44,000 from funds of the Issuer.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 1996 A Bonds, funding a reserve account for the Series 1996 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 1996 A 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 negotiable Series 1996 A Bonds of the Issuer, in an aggregate principal amount of not more than $300,000. The Series 1996 A Bonds shall be issued as a single Bond, designated as "Sewer Revenue Bond, Series 1996 A (West Virginia SRF Program)," and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 1996 A Bonds remaining after funding of the Series 1996 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest on the Series 1996 A Bonds, if any, shall be deposited in or credited to the Bond Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 1996 A Bonds shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 1996 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 1996 A Bonds, if any, shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 1996 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 1996 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 1996 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. The Bonds shall be dated as of the date specified in a Supplemental Resolution and shall bear interest from such date.

Section 3.03. Execution of Bonds. The Series 1996 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 1996 A Bonds shall cease to be such officer of the Issuer before the Series 1996 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 1996 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of the authorization of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 1996 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 1996 A Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 1996 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 1996 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 1996 A Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Series 1996 A Bonds.

The registered Series 1996 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly

authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 1996 A Bonds or transferring the registered Series 1996 A Bonds are exercised, all Series 1996 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 1996 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 1996 A Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 1996 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 1996 A Bonds or, in the case of any proposed redemption of Series 1996 A Bonds, next preceding the date of the selection of Series 1996 A Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 1996 A Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Holder or Holders of the Series 1996 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1996 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 1996 A Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the operation of the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Series 1986 Primary Bond, and senior and prior to the lien on such Net Revenues in favor of the Holders of the Series 1986 Supplemental Bond. The Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Prior Bonds and the Series 1996 A Bonds and to make the payments into the respective Sinking Funds, the Reserve Accounts therein, and the Renewal and Replacement Fund, and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 1996 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 1996 A Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 1996 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1996 A Bonds to the original purchasers;

C. An executed and certified copy of Bond Legislation;

D. An executed copy of the Loan Agreement; and

E. The unqualified approving opinion of bond counsel on the Series 1996 A Bonds.

Section 3.10. Form of Series 1996 A Bonds. The text of the Series 1996 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[FORM OF SERIES 1996 A BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF ELKINS
SEWER REVENUE BOND, SERIES 1996 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-___ $_____

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF ELKINS, a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of _____ DOLLARS ($_____), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached 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, 199____, as set forth on the "Schedule of Annual Debt Service" attached as EXHIBIT B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Bond Legislation), shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 199____, 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 such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and

among the Issuer, the Authority and the West Virginia Division of Environmental Protection, dated _____, 199____.

This Bond is issued (i) to pay 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) [to pay interest on the Bonds of this Series (the "Bonds") during the construction of the Project and for not more than 6 months thereafter; (iii) to fund a reserve account for the Bonds; (iv)] to pay certain costs of issuance hereof and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or 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 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (the "Act"), and a Bond Ordinance duly enacted by the Issuer on _____, 199____, and a Supplemental Resolution duly adopted by the Issuer on _____, 199____ (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S SEWER REVENUE BOND, SERIES 1986 (THE "SERIES 1986 PRIMARY BOND"), DATED APRIL 28, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,037,970.

THIS BOND IS ISSUED SENIOR AND PRIOR WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S SUPPLEMENTAL SUBORDINATE SEWER REVENUE BOND, SERIES 1986 (THE "SERIES 1986 SUPPLEMENTAL BOND") , DATED APRIL 28, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $517,001;

THE SERIES 1986 PRIMARY BOND AND THE SERIES 1986 SUPPLEMENTAL BOND ARE HEREINAFTER COLLECTIVELY CALLED THE "PRIOR BONDS."

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on parity with the pledge of Net Revenues in favor of the holders of the Series 1986 Primary

Bond, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 1996 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the moneys in the Series 1996 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with or junior to the Bonds, including the Prior Bonds; provided however, that so long as there exists in the Series 1996 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding prior to or on a parity with or junior to the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the 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 in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF ELKINS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated _____, 199____.

[SEAL]

_____
Mayor

ATTEST:

_____
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1996 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 199____.

ONE VALLEY BANK, NATIONAL ASSOCIATION, as Registrar

By _____
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

	AMOUNT	DATE		AMOUNT	DATE
(1)	$		(19)	$	
(2)	$		(20)	$	
(3)	$		(21)	$	
(4)	$		(22)	$	
(5)	$		(23)	$	
(6)	$		(24)	$	
(7)	$		(25)	$	
(8)	$		(26)	$	
(9)	$		(27)	$	
(10)	$		(28)	$	
(11)	$		(29)	$	
(12)	$		(30)	$	
(13)	$		(31)	$	
(14)	$		(32)	$	
(15)	$		(33)	$	
(16)	$		(34)	$	
(17)	$		(35)	$	
(18)	$		(36)	$	

TOTAL $_____

EXHIBIT B

SCHEDULE OF ANNUAL DEBT SERVICE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 1996 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the City Clerk is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

Section 3.12. "Amended Schedule A" Filing. Within 60 days following the Completion Date, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created (or continued if previously established by the Prior Ordinance) with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

(1) Revenue Fund (established by the Prior Ordinance);

(2) Operation and Maintenance Fund (established by the Prior Ordinance);

(3) Renewal and Replacement Fund (established by the Prior Ordinance); and

(4) Bond Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established by the Prior Ordinance) with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

(1) Series 1986 Primary Bond Sinking Fund (established by the Prior Ordinance);

(a) Within the Series 1986 Primary Bond Sinking Fund, the Series 1986 Primary Bond Reserve Account (established by the Prior Ordinance);

(2) Series 1986 Supplemental Bond Sinking Fund (established by the Prior Ordinance);

(a) Within the Series 1986 Supplemental Bond Sinking Fund, the Series 1986 Supplemental Bond Reserve Account (established by the Prior Ordinance);

(3) Series 1996 A Bonds Sinking Fund; and

(a) Within the Series 1996 A Bonds Sinking Fund, the Series 1996 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinance and in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in the Prior Ordinance and in this Bond Legislation. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, each month, transfer from the Revenue Fund and deposit in the Operation and Maintenance Fund, an amount sufficient to pay current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1986 Primary Bond Sinking Fund the amount required by the Prior Ordinance to pay interest on the Series 1986 Primary Bond and (ii) commencing 4 months prior to the first date of payment of interest on the Series 1996 A Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 1996 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 1996 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1996 A Bonds Sinking Fund and the next quarterly interest payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1986 Primary Bond Sinking Fund the amount required by the Prior Ordinance to pay principal of the Series 1986 Primary Bond and (ii) commencing 4 months prior to the first date of payment of principal of the Series 1996 A Bonds, for deposit in the Series 1996 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 1996 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1996 A Bonds Sinking Fund and the next quarterly principal payment date is less than 4 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1986 Primary Bond Reserve Account the amount required by the Prior Ordinance to be deposited therein and (ii) commencing 3 months prior to the first date of payment of principal of the Series 1996 A Bonds, if not fully funded upon issuance of the Series 1996 A Bonds, remit to the Commission for deposit in the Series 1996 A Bonds Reserve Account, an amount equal to 1/120 of the Series 1996 A Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1996 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 1996 A Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, from the moneys remaining in the Revenue Fund (as previously set forth in the Prior Ordinance and not in addition thereto), transfer to the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any of the Reserve Accounts. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, or improvements or extensions to the System; provided, that any deficiency in any of the Reserve Accounts, except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required by Subsection 5.03A(4) hereof, shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1986 Supplemental Bond Sinking Fund the amount required by the Prior Ordinance to pay principal of the Series 1986 Supplemental Bond.

(7) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1986 Supplemental Bond Reserve Account the amount required by the Prior Ordinance to be deposited therein.

Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the respective Sinking Funds, including the Reserve Accounts

therein, and the Renewal and Replacement fund during the following month or such longer period as shall be required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenue"). Surplus Revenues may be used for any lawful purpose of the System.

Moneys in the Series 1996 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1996 A Bonds as the same shall become due. Moneys in the Series 1996 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1996 A Bonds, as the same shall come due, when other moneys in the Series 1996 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 1996 A Bonds Sinking Fund and the Series 1996 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 1996 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 1996 A Bonds Reserve Account which result in a reduction in the balance of the Series 1996 A Bonds Reserve Account to below the Series 1996 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full to the Series 1986 Primary Bond Sinking Fund and the Series 1996 A Bonds Sinking Fund.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum amount of principal and interest which will become due in any year for account of the Bonds of such series, including such additional Bonds.

The Issuer shall not be required to make any further payments into the Series 1996 A Bonds Sinking Fund or into the Series 1996 A Bonds Reserve Account therein when the aggregate amount of funds in said Sinking Fund and Reserve Account are at least equal to the aggregate principal amount of the Series 1996 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal and interest payments, and any payments made for the purpose of funding any Reserve Account, whether for a deficiency or otherwise, shall be made on a parity basis and pro rata with respect to the Series 1986 Primary Bond and Series 1996 A Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 1996 A Bonds Sinking Fund and the Series 1996 A Bonds Reserve Account created hereunder, and all amounts required for said Sinking Fund and Reserve Account shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

Moneys in the Series 1996 A Bonds Sinking Fund and the Series 1996 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 1996 A Bonds Sinking Fund, including the Series 1996 A Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1996 A Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

B. The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Commission the required interest, principal and reserve payments with respect to the Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement as Exhibit F, and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of each calendar month.

D. The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Commission the SRF Administrative Fee as set forth in Schedule Y attached to the Loan Agreement.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due.

F. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

H. The Gross Revenues of the System shall only be used for purposes of the System.

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of the Series 1996 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 1996 A Bonds, there shall first be deposited with the Commission in the Series 1996 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 1996 A Bonds for the period commencing on the date of issuance of such Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 1996 A Bonds, there shall be deposited with the Commission in the Series 1996 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 1996 A Bonds Reserve Account.

C. Next, from the proceeds of the Series 1996 A Bonds, there shall first be credited to the Bond Construction Trust Fund and then paid, any and all other borrowings by the Issuer made for the purpose of temporarily financing a portion of the Costs of the Project and any borrowings by the Issuer from the Authority, including interest accrued thereon to the date of such payment, not otherwise paid from funds of the Issuer; provided that the Authority and the DEP have previously consented to the payment of such borrowings.

D. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 1996 A Bonds, such moneys shall be deposited with the Depository Bank in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02 hereof.

E. The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in the Bond Legislation. Moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so transferred or expended, are hereby pledged as additional security for the Series 1996 A Bonds.

Section 6.02. Disbursements From the Bond Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 1996 A Bonds will

be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Bond Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement as Exhibit C, and

(2) a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

(B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

(C) That each of such costs has been otherwise properly incurred; and

(D) That payment for each of the items proposed is then due and owing.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Bond Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Bond Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Bond Construction Trust Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 1996 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 1996 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 1996 A Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 1996 A Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 1996 A Bonds, shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1996 A Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service of the Series 1996 A Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System, on a parity with the lien on the Net Revenues in favor of the Holder of the Series 1986 Primary Bond, and senior and prior to the lien on such Net Revenues in favor of the Holder of the Series 1986 Supplemental Bond. The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 1996 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the Issuer enacted on August 4, 1994.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease, or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinance and with the written consent of the Authority and the DEP. Additionally, so long as the Series 1996 A Bonds are outstanding and except as otherwise required by law or with the written consent

of the Authority and the DEP, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds Outstanding or to effectively defease the pledge created by this Bond Legislation in accordance with Section 10.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 1996 A Bonds, immediately be remitted to the Commission for deposit in the Series 1996 A Bonds Sinking Fund, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Series 1996 A Bonds as prescribed by Section 10.01 hereof, all on a parity basis and pro rata with the Prior Bonds. Any balance remaining after the payment of the Bonds and the interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of $10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of $10,000 but not in excess of $50,000, the Issuer shall first, determine, with the written approval of the Consulting Engineers, that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property in excess of $10,000 and not in excess of $50,000, shall, with the written consent of the Authority, be remitted by the Issuer to the Commission for deposit in the Sinking Funds and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the redemption price of such Bonds. Such payment of such proceeds into the Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of $50,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 66 2/3% in amount of all Bonds then Outstanding. The Issuer shall prepare the form of such approval and

consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 1996 A Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 1996 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 1996 A Bonds and the Prior Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation and the Prior Ordinance at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 1996 A Bonds and the Prior Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 1996 A Bonds and the Prior Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinance shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 1996 A Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinance).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 1996 A Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of additions, extensions, improvements or betterments to the System or refunding the Series 1996 A Bonds or the Prior Bonds issued pursuant hereto, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall be not less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

(1) The Bonds then Outstanding, including, without limitation, the Prior Bonds;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the City Clerk prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate acquisition and construction of such additions, extensions, betterments or improvements to the System which are to be financed by such Parity Bonds.

The term "Parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section and

the Prior Ordinance, payable from the Net Revenues of the System on a parity with the Bonds, and all the covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section and the Prior Ordinance. All the Series 1996 A Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

The term "Parity Bonds," as used in this section, shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 1996 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or equally, as to lien on and source of and security for payment from such revenues, with the Series 1996 A Bonds except in the manner and under the conditions provided in this section.

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Legislation and the Prior Ordinance with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation and the Prior Ordinance, shall have been made in full as required to the date of issuance of the Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation and the Prior Ordinance and every ordinance supplemental thereto, or shall have fully corrected any delinquency or deficiency in such payments and compliance.

Section 7.08. Books; Records and Facilities. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and

commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Consulting Engineers, the Authority and the DEP, or any other original purchaser of the Series 1996 A Bonds, and shall mail in each year to any Holder or Holders of the Series 1996 A Bonds requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations payable from the revenues of the System outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 1996 A Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 1996 A Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the revenues

of the System are adequate to meet the Issuer's operation and maintenance expenses and debt service and reserve requirements.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction of the Project, the Issuer shall also provide the Authority and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

Section 7.09. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the City Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created (or, where appropriate, continued) hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 1996 A Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with or junior to the Series 1996 A Bonds, including the Prior Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 1996 A Bonds Reserve Account and any reserve accounts for obligations prior to or on a parity with or junior to the Series 1996 A Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Series 1996 A Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with or junior to the Series 1996 A Bonds, including the Prior Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04 hereof.

Section 7.10. Operating Budget; Audit and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the DEP and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds, or anyone acting for and in behalf of such Holder of any Bonds.

In addition, the Issuer shall annually cause the records of the System to be audited by an Independent Certified Public Accountant, the report of which audit shall be submitted to the Authority and the DEP and which audit report shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, this Bond Legislation and the Loan Agreement and that the revenues of the System are adequate to meet the Issuer's operation and maintenance expenses and debt service requirements.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement as Exhibit B, and forward a copy of such report to the Authority and the DEP by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to the Authority, the DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed.

The Issuer agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations

of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 1996 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the original cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. In the event of any damage to or destruction of any portion of the System, the proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer

will itself, or will require each contractor and subcontractor to obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than $500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the amount of any construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall 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 Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Division of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Division of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project and all orders and approvals from the Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer agrees to comply with all the terms and conditions of the Loan Agreement and the Act.

Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority.

The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 1996 A Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 1996 A Bonds during the term thereof is, under the terms of the Series 1996 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1996 A Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 1996 A Bonds during the term thereof is, under the terms of the Series 1996 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 1996 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 1996 A Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related. All of the foregoing shall be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Series 1996 A Bonds or $5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 1996 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1996 A Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 1996 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.20. Securities Laws Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17CFR Part 240).

ARTICLE VIII

INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the Prior Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own 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 Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest on the Series 1996 A Bonds from gross income for federal income tax purposes.

Section 8.02. Arbitrage and Tax Exemption. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 1996 A Bonds which would cause the Series 1996 A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take any and all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Series 1996 A Bonds) so that the

interest on the Series 1996 A Bonds will be and remain excludable from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Small Issuer Exemption from Rebate of Excess Investment Earnings to the United States. In accordance with Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that no part of the Series 1996 A Bonds are private activity bonds; that 95% or more of the Net Proceeds of the Series 1996 A Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds) issued by the Issuer during the calendar year in which the Series 1996 A Bonds are issued does not and will not exceed $5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulat ions from time to time in effect and applicable to the Series 1996 A Bonds. For purposes of this first paragraph of Section 8.03 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this first paragraph of Section 8.03 and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this first paragraph of Section 8.03 and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1996 A Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1996 A Bonds. In the event of a failure to pay the correct rebate amount or amounts, the Issuer will pay, from any lawful sources available therefor, to the United States such amount or amounts, plus a penalty equal to 50% of the rebate amount not paid when required to be paid, plus interest on that amount, unless waived. In order to provide for the administration of this paragraph, the Issuer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its

rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation or, if the Issuer qualifies for the small governmental issue exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 1996 A Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as such term "gross proceeds" is defined in the Code).

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 1996 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 1996 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 1996 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 1996 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or

(3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinance.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 1996 A Bonds shall be on a parity with those of the Holder of the Series 1986 Primary Bond and senior and prior to those of the Holder of the Series 1986 Supplemental Bond.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under

the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to the Series 1996 A Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, 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 Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might exercise.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond

Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

DEFEASANCE

Section 10.01. Defeasance of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of the Series 1996 A Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1996 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 1996 A Bonds from gross income for federal income tax purposes.

The Series 1996 A Bonds, for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 1996 A Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1996 A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay, when due, the principal installments of and interest due and to become due on said Series 1996 A Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1996 A Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 1996 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 1996 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 1996 A Bonds shall be made without the consent in writing of the Registered Owners of 66-2/3% or more in principal amount of the Series 1996 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 1996 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest, if any, on the Series 1996 A Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 1996 A Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 1996 A Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed; Prior Ordinance. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided that, in the event

of any conflict between this Ordinance and the Prior Ordinance, the Prior Ordinance shall control (unless less restrictive), so long as the Prior Bonds or any portion thereof are Outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the City Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the Elkins Inter-Mountain, a newspaper published and of general circulation in The City of Elkins, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 1996 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading:	-	July 2, 1996
Passed on Second Reading:	-	July 18, 1996
Passed on Final Reading Following Public Hearing:	-	August 1, 1996

Jimmy D. Howard
Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of THE CITY OF ELKINS on the 1st day of August, 1996.

Dated: August 22, 1996.

[SEAL]

City Clerk

07/24/96
ELKSJM.A6
255620/95001

EXHIBIT A

Loan Agreement included in bond transcript as Document No. 3

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 1996 A
(West Virginia SRF Program)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 1996 A (WEST VIRGINIA SRF PROGRAM), OF THE CITY OF ELKINS; RATIFYING AND APPROVING A LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the city council (the "Governing Body") of The City of Elkins (the "Issuer"), has duly and officially adopted and enacted a bond ordinance, effective August 1, 1996 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF ELKINS AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $300,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1996 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE

TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), of the Issuer (the "Bonds" or "Series 1996 A Bonds"), in the aggregate principal amount not to exceed $300,000, and has authorized the execution and delivery of a loan agreement relating to the Bonds dated June 10, 1996 (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection (the "DEP"), all in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted and that the Loan Agreement be ratified and approved by the Issuer, that the exact principal amount, the date, the maturity date, the interest rate, the interest and principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ELKINS:

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), of the Issuer, originally represented by a single Bond, numbered R-1, in the principal amount of $300,000. The

Bonds shall be dated the date of delivery thereof, shall finally mature June 1, 2017, and shall bear interest at the rate of 2% per annum. The Bonds shall be payable quarterly in principal installments and interest on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 1997, and ending June 1, 2017, and in the amounts as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Bonds.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 3. The Issuer does hereby approve and shall pay the administrative fee equal to 1% of the principal amount of the Bonds set forth in the "Schedule Y" attached to the Loan Agreement.

Section 4. The Issuer does hereby ratify, approve and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the application to the DEP and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 5. The Issuer does hereby appoint and designate One Valley Bank, National Association, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds and does approve and accept 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, approved and directed.

Section 6. The Issuer does hereby appoint and direct the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds.

Section 7. The Issuer does hereby appoint Davis Trust Co., Elkins, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 8. Series 1996 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 1996 A Bonds Sinking Fund, as capitalized interest.

Section 9. Series 1996 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 1996 A Bonds Reserve Account.

Section 10. The balance of the proceeds of the Bonds shall be deposited in or credited to the Bond Construction Trust Fund as received from time to time for payment of Costs of the Project, including costs of issuance of the Bonds and related costs.

Section 11. The Mayor and the City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about August 22, 1996, to the Authority pursuant to the Loan Agreement.

Section 12. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 13. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Moneys in the Series 1996 A Bonds Sinking Fund, including the Series 1996 A Bonds Reserve Account therein, shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 14. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated thereunder.

Section 15. The Issuer is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System; no part of the Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer; and the Issuer reasonably expects to issue less than $5,000,000 aggregate principal face amount of tax-exempt obligations (other than private activity bonds) during the calendar year 1996, being the calendar year in which the Bonds are to be issued. For purposes of this Section and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on

behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Section 16. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 1st day of August, 1996.

THE CITY OF ELKINS

Jimmy D. Hammons

Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The City of Elkins on the 1st day of August, 1996.

Dated: August 22, 1996.

[SEAL]

City Clerk

07/18/96
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ORDINANCE NO. 014
THE CITY OF ELKINS
SEWER REFUNDING REVENUE BONDS, SERIES 2004 A

BOND ORDINANCE

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THE CITY OF ELKINS

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE SEWER REFUNDING REVENUE BONDS, SERIES 2001 A, OF THE CITY OF ELKINS; THE ISSUANCE OF SEWER REFUNDING REVENUE BONDS, SERIES 2004 A, OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $1,200,000, THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE CITY, SHALL BE EXPENDED FOR SUCH REFUNDING AND TO PAY COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATING THERETO; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF ELKINS:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation"), is enacted pursuant to the provisions of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act" or "Refunding Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Elkins (the "City") is a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State and the City presently owns and operates a public sewerage system.

B. In accordance with Section 18 of the Act, the System is under the supervision and control of the Elkins Sanitary Board (the "Sanitary Board").

C. The acquisition and construction of the System were financed or refinanced in part by the proceeds of prior bond issues of the City, of which there are currently outstanding the following: (i) the Subordinate Sewer Revenue Bonds, Series 1986 B, dated April 28, 1986, issued in the original aggregate principal amount of $517,001 (the "Series 1986 B Bonds"); (ii) the Sewer Revenue Bonds, Series 1996 A, dated August 22, 1996, issued in the original aggregate principal amount of $300,000 (the "Series 1996 A Bonds"); and (iii) the Sewer Refunding Revenue Bonds, Series 2001 A, dated September 13, 2001, issued in the original aggregate principal amount of $1,121,222. (the "Series 2001 A Bonds"). The Series 1986 B Bonds, Series 1996 A Bonds and Series 2001 A Bonds are secured by a parity first lien on the net revenues of the System.

D. Pursuant to Section 22c of the Act, the City is authorized and empowered to issue refunding revenue bonds for the purpose of refunding, paying or discharging all or any part of its outstanding revenue bonds, including interest thereon.

E. The City has received a proposal from Branch Banking & Trust Co., Charleston (the "Original Purchaser"), to refund the Series 2001 A Bonds for the purpose of achieving interest cost savings.

F. Based upon the assumed principal amount, maturity schedule and interest rates for the Series 2004 A Bonds presented to the City by the Original Purchaser, the Series 2004 A Bonds show a net present value debt service savings to the City after deducting all expenses of the refunding and the costs of issuing the Series 2004 A Bonds and such refunding is in the best interest of the City. It is therefore deemed necessary and desirable that the City issue its Sewer Refunding Revenue Bonds, Series 2004 A (the "Series 2004 A Bonds"), in the maximum total aggregate principal amount of not more than $1,200,000 for the purpose of refunding the Series 2001 A Bonds.

G. The City shall not sell the Series 2004 A Bonds without setting forth in the Supplemental Resolution the determination regarding net present value savings set forth in paragraph F above, based upon the actual principal amount, maturity schedule and interest rates for the Series 2004 A Bonds, and the City shall not issue the Series 2004 A Bonds without having obtained from an Independent Certified Public Accountant a certification that the amount of savings stated to be achieved by the refunding shall in fact be saved, based upon their review, comparison and analysis of the net interest cost in dollars of the Series 2004 A Bonds and the net interest cost in dollars of the Series 2001 A Bonds.

H. The Sanitary Board has petitioned the Council to issue Bonds for the purposes set forth herein.

I. Subject to the determination and certification required by paragraph G above, it is in the best interests of the City, and the residents thereof, that the City refund

the Series 2001 A Bonds in their entirety with proceeds of the Series 2004 A Bonds and other funds of the City, issue the Series 2004 A Bonds and pledge the Net Revenues of the System for payment thereof on a parity with the Series 1986 B Bonds and the Series 1996 A Bonds.

J. The City has met the coverage requirements for issuance of parity bonds set forth in the Series 1986 B Bonds and the Series 1996 A Bonds and the ordinances authorizing issuance of the Series 1986 B Bonds and the Series 1996 A Bonds, and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature. Prior to the issuance of the Series 2004 A Bonds, the City will obtain the written consent of the Holders of the Series 1986 B Bonds and the Series 1996 A Bonds. Other than the Series 2004 A Bonds, the Series 1986 B Bonds and the Series 1996 A Bonds, following the refunding contemplated herein, there will be no outstanding bonds or obligations of the City which are secured by revenues or assets of the System.

K. The estimated revenues to be derived in each year from the operation of the System after the refunding and defeasance of the Series 2001 A Bonds will be sufficient to pay all Operating Expenses of the System and the principal of and interest on the Series 1986 B Bonds, the Series 1996 A Bonds and the Series 2004 A Bonds and to make all other payments provided for in this Ordinance.

L. All things necessary to make the Series 2004 A Bonds, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the City according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Series 2004 A Bonds, will be timely done and timely performed.

M. The Series 2004 A Bonds and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the forms set forth in EXHIBIT A - BOND FORM 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.

N. The City is a governmental unit with general taxing powers.

O. The Series 2004 A Bonds are not private activity bonds as defined in the Code.

P. Ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Series 2004 A Bonds will be issued for local governmental activities of the City.

Q. The City shall not permit at any time any of the proceeds of the Series 2004 A Bonds or other funds of the City to be used directly or indirectly in any manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code.

R. The City will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds.

S. The Bonds will not be federally guaranteed within the meaning of Section 149(b) of the Code.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of Series 2004 A Bonds by those who shall be the Bondholders of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the City and such Bondholders, and the covenants and agreements herein set forth to be performed by the City shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2004 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. All capitalized terms used in this Ordinance and not otherwise defined in the recitals or in the text hereof shall have the meanings specified below, unless the context expressly requires otherwise:

"Act" or "Refunding Act" means Chapter 16, Article 13 of the West Virginia Code of 1931, as amended and in effect on the date of delivery of the Series 2004 A Bonds.

"Authority" means the West Virginia Water Development Authority, the original purchaser of the Series 1986 B Bonds and the Series 1996 A Bonds, or its successor.

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

"Board" or "Sanitary Board" means the Elkins Sanitary Board.

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

"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, and shall initially mean Steptoe & Johnson PLLC, Charleston, West Virginia.

"Bondholder," "Holder of the Bonds," "Owner of the Bonds" or any similar term means any person who shall be the registered owner of any outstanding Bond, and shall initially mean the Original Purchaser.

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

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, or such other period as shall be determined by the City, except that the first Bond Year shall begin on the Closing Date.

"Bonds" means, collectively, the Series 2004 A Bonds, the Series 1986 B Bonds, the Series 1996 A Bonds and any additional parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

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

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 2004 A Bonds, in substantially the form set forth in EXHIBIT A - BOND FORM hereto.

"City" means The City of Elkins, a municipal corporation of the State of West Virginia, and, where appropriate, the City Council and/or Sanitary Board of the City.

"City Clerk" means the City Clerk of the City.

"Closing Date" means the date upon which there is an exchange of the Series 2004 A Bonds for the proceeds representing the original purchase price thereof.

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

"Costs of Issuance" shall mean those costs of issuing the Series 2004 A Bonds, including, but not limited to, legal, accounting, fiscal agent fees and expenses and fees in connection therewith.

"Costs of Issuance Fund" means the Costs of Issuance Fund created by Section 4.01 hereof.

"Depository Bank" means the bank or banks to be designated as such in the Supplemental Resolution, and any other bank or national banking association located in the State of West Virginia, eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC that may hereafter be appointed by the City as Depository Bank.

"Event of Default" means any occurrence or event specified in Section 7.01.

"FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Council of the City or any other governing body of the City that succeeds to the functions of the City Council as presently constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined), or any Tap Fees, as hereinafter defined.

"Independent Certified Public Accountant" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the City to prepare an independent annual or special audit of the accounts of the System

or for any purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Net Proceeds" means the face amount of the Series 2004 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2004 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2004 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Nonpurpose Investment" means any investment property which is acquired with the gross proceeds of the Series 2004 A Bonds and is not acquired in order to carry out the governmental purpose of the Series 2004 A Bonds.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Ordinance" means this Ordinance and all resolutions and ordinances supplemental hereto or amendatory hereof.

"1986 Ordinance" means collectively, the ordinance and supplemental resolution of the City, duly enacted March 13, 1986, authorizing the Series 1986 B Bonds.

"1996 Ordinance" means collectively, the ordinance and the supplemental resolution of the City, duly enacted August 1, 1996, authorizing the Series 1996 A Bonds.

"2001 Ordinance" means collectively, the ordinance and the supplemental resolution of the City, duly enacted September 10, 2001, authorizing the Series 2001 A Bonds.

"Original Purchaser" means Branch Banking & Trust Company, Charleston, West Virginia, as the purchasers of the Series 2004 A Bonds directly from the City, or, if the City and such Original Purchaser do not agree to the purchase of the Series 2004 A Bonds with interest rates and other terms allowable under the Act, such other person or persons, firm or firms, bank or banks, corporation or corporations or such other entity or entities as shall purchase the Series 2004 A Bonds directly from the City, as determined by a resolution supplemental hereto; provided, that the Original Purchaser and the City shall agree to the purchase of the Series 2004 A Bonds, as hereinafter defined, including the exact principal amount thereof and interest rate or rates thereon as fixed by said supplemental resolution to be adopted by the City at the time of approval of such sale of said Series 2004 A Bonds.

"Outstanding," when used with reference to the Series 2004 A Bonds and as of any particular date, describes all Bonds theretofore and thereupon being issued and delivered except (a) any Bond canceled by the registrar for such Bond at or prior to said date; (b) any Bond for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as provided by Section 9.01; and (d) with respect to determining the number or percentage of Bondholders or Bonds for the purpose of consents, notices and the like, any Bond registered to the City.

"Paying Agent" means the Registrar or other entity designated as such for the Series 2004 A Bonds in the Supplemental Resolution, and any successor thereto appointed in accordance with Section 8.12 hereof.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Prior Bonds" means, collectively, the Series 1986 B Bonds and the Series 1996 A Bonds.

"Prior Ordinances" means, collectively, the ordinances of the City enacted on March 13, 1986 and August 1, 1996, respectively, as supplemented, authorizing the issuance of the Series 1986 B Bonds and the Series 1996 A Bonds.

"Purchase Price," for the purpose of computation of the Yield of the Series 2004 A Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Series 2004 A Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers), at which price a substantial amount of the Series 2004 A Bonds of each maturity is sold or, if the Series 2004 A Bonds are privately placed, the price paid by the first buyer of the Series 2004 A Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Series 2004 A Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Series 2004 A Bonds.

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

(a) Government Obligations;

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

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall

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

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

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

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

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

"Record Date" means the day of the month which shall be so stated in the Series 2004 A Bonds, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Redemption Date" means the date fixed for redemption of any Bonds of the City called for redemption.

"Redemption Price" means the price at which any Bonds of the City may be called for redemption and includes the principal of and interest on such Bonds to be redeemed, plus the interest and premium, if any, required to be paid to effect such redemption.

"Registrar" means the bank to be designated in the Supplemental Resolution as the Registrar for the Series 2004 A Bonds, and any successor thereto appointed in accordance with Section 8.08 hereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Internal Revenue Code of 1954.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the 2001 Ordinance and continued hereby.

"Revenue Fund" means the Revenue Fund created by the 1986 Ordinance and continued hereby.

"Series 1986 B Bonds" means the City's Sewer Revenue Bonds, Series 1986 B, dated April 28, 1986, issued in the original aggregate principal amount of $517,001.

"Series 1996 A Bonds" means the City's Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated August 22, 1996, issued in the original aggregate principal amount of $300,000.

"Series 2001 A Bonds" means the City's Sewer Refunding Revenue Bonds, Series 2001 A, dated September 13, 2001, issued in the aggregate principal amount of $1,121,222.

"Series 2004 A Bonds" means the Sewer Refunding Revenue Bonds, Series 2004 A, of the City, originally authorized to be issued pursuant to this Ordinance.

"Series 2004 A Bonds Reserve Account" means the Series 2004 A Bonds Reserve Account created by Section 4.02 hereof.

"Series 2004 A Bonds Reserve Requirement" means, as of any date of calculation, the lesser of (i) 10% of the original stated principal amount of the Series 2004 A Bonds; (ii) the maximum amount of principal and interest which will become due on the Series 2004 A Bonds in any year; or (iii) 125% of the average amount of principal and interest which will become due on the Series 2004 A Bonds.

"Series 2004 A Bonds Sinking Fund" means the Series 2004 A Bonds Sinking Fund created by Section 4.02 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution to be adopted by the City following enactment of this Ordinance, setting forth the final amounts, maturities, interest rates and other terms of the Series 2004 A Bonds and authorizing the sale of the Series 2004 A Bonds to the Original Purchaser; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by this Ordinance to be set aside and held for the payment of or security for the Bonds or any other obligations of the City, including, without limitation, the Renewal and Replacement Fund and any reserve accounts.

"System" means the complete existing public sewerage system now owned by the City, consisting of a sewage treatment and collection system and shall include any further extensions, additions, betterments and improvements thereto hereafter acquired or constructed for said sewer system from any sources whatsoever, both within and without the City.

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

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

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Ordinance; and the term "hereafter" means after the date of adoption 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 REFUNDING

Section 2.01. Authorization of Refunding. All Series 2001 A Bonds Outstanding as of the date of issuance of the Series 2004 A Bonds are hereby ordered to be refunded and the pledge of Net Revenues in favor of the Holders of the Series 2001 A Bonds imposed by the 2001 Ordinance, the moneys in the funds and accounts created by the 2001 Ordinance pledged to payment of the Series 2001 A Bonds, and any other funds pledged by the 2001 Ordinance to payment of the Series 2001 A Bonds are hereby ordered terminated, discharged and released upon the payment to the Bond Commission for deposit in the Series 2001 A Bonds Sinking Fund from the proceeds of the Series 2004 A Bonds and from other moneys available therefor, of the following: (a) an amount equal to the fiscal and paying agent charges to become due and payable in connection with the Series 2001 A Bonds; and (b) an amount to provide for the payment of the principal of and interest on the Series 2001 A Bonds, plus the redemption premium, if any, as of May 27, 2004. Contemporaneously with the deposit of the proceeds of the Series 2004 A Bonds and other moneys into the Series 2001 A Bonds Sinking Fund, the amounts on deposit in the sinking fund, including the reserve account therein, created and maintained on behalf of the Series 2001 A Bonds shall be released from the lien created by the 2001 Ordinance and deposited, to the extent not already deposited therein, in the Series 2001 A Bonds Sinking Fund, the Series 2004 A Bonds Reserve Account or such other fund or account as shall be set forth in the Supplemental Resolution and invested as provided therein.

ARTICLE III

THE BONDS

Section 3.01. Form and Payment of Bonds. No Bond shall be issued pursuant to this Ordinance except as provided in this Article III. Any Bonds issued pursuant to this Ordinance after the issuance of the Series 2004 A Bonds, as hereinafter provided, may be issued only as fully registered Bonds without coupons, in the denomination of $100,000 or any integral multiple thereof for any year of maturity. All Bonds shall be dated as of the date provided in a Supplemental Resolution applicable to such series. Bonds shall bear interest from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Bonds has been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Bonds shall be in default, Bonds issued in exchange for Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Bonds surrendered.

The principal of and the premium, if any, on the Series 2004 A Bonds shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender at the principal office of the Paying Agent. Interest on the Bonds shall be paid by check or draft made payable and mailed to the Holder thereof at his address as it appears in the Bond Register at the close of business on the Record Date, or, if requested, in the case of a Bondholder of $500,000 or more of the Bonds, by wire transfer to a domestic bank account specified in writing at least 5 days prior to such interest payment date by such Bondholder.

In the event any Bond is redeemed in part, such bond shall be surrendered to and canceled by the Registrar, and the City shall execute, and the Registrar shall authenticate and deliver to the Holder thereof, another Bond in the principal amount of said Bond then Outstanding.

Section 3.02. Execution of Bonds. The Series 2004 A Bonds shall be executed in the name of the City by the Mayor, by his or her manual or facsimile signature, and the seal of the City shall be affixed thereto or imprinted thereon and attested by the City Clerk by his or her manual or facsimile signature; provided, that, all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the City before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such

Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Bonds shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference with respect to the Series 2004 A Bonds, shall have been duly manually executed by the Registrar. Any such manually 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 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 and Registration. Subject to the requirements for transfer set forth below, the Series 2004 A Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder, in accepting any of said Bonds, shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Series 2004 A Bonds remains Outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Bonds. Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of a Bond, there shall be issued at the option of the Holder or the transferee another Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Bond and of the same series, interest rate and maturity of said transferred Bond.

Upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar and duly executed by the registered owner or his attorney or legal representative duly authorized in writing, Bonds may at the option of the

Holder thereof be exchanged for an equal aggregate principal amount of Bonds of the same series, maturity and interest rate, in any authorized denominations.

In all cases in which the privilege of transferring or exchanging a Series 2004 A Bond is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such transfer or exchange shall forthwith be canceled by the Registrar. Transfers of Bonds, the initial exchange of Bonds and exchanges of Bonds in the event of partial redemption of fully registered Bonds shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For other exchanges of Bonds, the Registrar may impose a service charge. For every such transfer or exchange of bonds, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than the initial exchange or in the event of partial redemption, shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange. The Registrar shall not be obliged to make any such transfer or exchange of Bonds that have been called for redemption.

Section 3.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2004 A Bond shall become mutilated or be destroyed, stolen or lost, the City may execute, in its discretion, and the Registrar shall authenticate, register and deliver any new Bond of like series, maturity and principal amount as the Bond, so mutilated, destroyed, stolen or lost, in exchange and upon surrender and cancellation of, such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing the City and the Registrar proof of his ownership thereof and that said Bond has been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City or the Registrar may prescribe and paying such expenses as the City or the Registrar may incur. The name of the Bondholder listed in the Bond Register shall constitute proof of ownership. All Bonds so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the City. If such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the City, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if such Bond be lost, stolen or destroyed, without surrender therefor.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of and security for payment from the Revenues pledged herein with all other Bonds issued hereunder.

Section 3.06. [RESERVED]

Section 3.07. Notice of Redemption. Unless waived by any Holder of the Series 2004 A 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 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.

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 holders of 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 Registrar 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 Bond 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 3.08. Persons Treated as Owners. The City, the Registrar and any agent of the City or the Registrar may treat the person in whose name any Bond is registered as the 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 3.09. Temporary Bonds. Until Bonds of any series in definitive form are ready for delivery, the City may execute and the Registrar shall authenticate, register, if applicable, and deliver, subject to the same provisions, limitations and conditions

set forth in this Article III, one or more printed, lithographed or typewritten Bonds in temporary form, substantially in the form of the definitive Bonds of such series, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the lien and benefit created under this Ordinance. Upon the presentation and surrender of any Bond or Bonds in temporary form, the City shall, without unreasonable delay, prepare, execute and deliver to the Registrar, and the Registrar shall authenticate, register, if applicable, and deliver, in exchange therefor, a Bond or Bonds in definitive form. Such exchange shall be made by the Registrar without making any charge therefor to the Holder of such Bond in temporary form.

Section 3.10. Authorization of Bonds. For the purposes of paying a portion of the costs of refunding all of the Series 2001 A Bonds of the City, funding the Series 2004 A Bonds Reserve Account and paying costs in connection therewith, and paying certain costs of acquisition and construction of certain improvements and additions to the System, there shall be issued, in one or more series, the Series 2004 A Bonds of the City, in an aggregate principal amount of not more than $1,200,000. The Series 2004 A Bonds shall be designated "Sewer Refunding Revenue Bonds, Series 2004 A" and shall be issued in fully registered form, in denominations of $100,000 or larger. The Series 2004 A Bonds shall be numbered from AR-1 consecutively upward. The Series 2004 A Bonds shall be dated; shall be in such aggregate principal amount; shall bear interest at such rate or rates, not exceeding the then legally permissible rate, payable at such times; shall mature on such dates and in such amounts; shall be subject to such mandatory and optional redemption provisions; and shall have such other terms, all as the City shall prescribe herein and in the Supplemental Resolution.

Section 3.11. Registration. The Series 2004 A Bonds shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Series 2004 A Bonds of each maturity, registered in the name of the Original Purchaser.

Section 3.12. Delivery of Bonds. The City shall execute and deliver the Series 2004 A Bonds to the Registrar, and the Registrar shall authenticate, register and deliver the Series 2004 A Bonds to the Original Purchaser upon receipt of the documents set forth below:

(A) A list of the names in which the Series 2004 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

(B) A request and authorization to the Registrar on behalf of the City, signed by an Authorized Officer, to authenticate and deliver the Series 2004 A Bonds to the Original Purchaser;

(C) Copies of this Ordinance and the Supplemental Resolution certified by the City Clerk;

(D) The unqualified approving opinion upon the Series 2004 A Bonds by Bond Counsel; and

(E) A copy of such other documents, certifications and verifications as the Original Purchaser may reasonably require.

Section 3.13. Form of Bonds. The definitive Series 2004 A Bonds shall be in substantially the form set forth in EXHIBIT A - BOND FORM attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 2004 A Bonds on behalf of the City and execution thereof by such officers shall constitute conclusive evidence of such approval, and the definitive Series 2004 A Bonds shall have the form of the opinion of Steptoe & Johnson PLLC, as Bond Counsel, attached thereto or printed on the reverse thereof.

Section 3.14. Disposition of Proceeds of Bonds. Upon the issuance and delivery of the Series 2004 A Bonds, the City shall forthwith deposit the proceeds thereof as follows:

A. All interest accrued on the Series 2004 A Bonds from the date thereof to the date of delivery thereof, if any, shall be deposited in the Series 2004 A Bonds Sinking Fund and applied to payment of interest on the Series 2004 A Bonds at the first interest payment date.

B. Proceeds of the Series 2004 A Bonds which, together with other moneys or securities deposited therein and the earnings thereon, shall be sufficient to accomplish the refunding and defeasance of the Series 2001 A Bonds (which amount shall be set forth in the Supplemental Resolution) shall be deposited in the Series 2001 A Bonds Sinking Fund.

C. Proceeds of the Series 2004 A Bonds equal to the Series 2004 A Bonds Reserve Requirement shall be remitted to the Bond Commission for deposit in the Series 2004 A Bonds Reserve Account; provided that, to the extent the Series 2004 A Bonds Reserve Requirement is satisfied in whole or in part from proceeds of any fund or account established for the Series 2001 A Bonds pursuant to the 2001 Ordinance, proceeds of the Series 2004 A Bonds shall be deposited in the Series 2004 A Bonds Reserve Account only to the extent needed to satisfy the balance of the Series 2004 A Bonds Reserve Requirement.

D. Proceeds of the Series 2004 A Bonds which shall be sufficient to pay all costs of issuance shall be deposited with the Depository Bank in the Costs of Issuance Fund and shall be drawn out, used and applied by the City solely to pay costs of issuance of the Series 2004 A Bonds and miscellaneous costs of refunding the Series 2001 Bonds at the written direction of the City. All such costs of issuance shall be paid within 60 days of the Closing Date. Moneys not to be applied immediately to pay such costs of issuance and refunding may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. If for any reason such proceeds, or any part thereof, are not necessary for, or are not applied to such purpose within 6 months after the Closing Date, such unapplied proceeds shall be transferred by the City to the Construction Fund.

E. The balance of any proceeds of the Series 2004 A Bonds and any moneys in any fund or account established for the Series 2001 A Bonds pursuant to the 2001 Ordinance, not used for any of the purposes set forth above, shall be deposited in the Construction Fund and shall be drawn out, used and applied by the City solely to pay the costs of acquisition and construction of certain improvements and extensions to the System (the "Project"). All such costs of the Project shall be paid within 6 months of the Closing Date. Moneys not to be applied immediately to pay such costs of the Project may be invested in accordance with this Ordinance, subject however, to applicable yield restrictions as may be in effect under the Code. All such proceeds shall constitute a trust fund for such purposes, and there hereby is created a lien upon such moneys until so applied in favor of the Holders of the Series 2004 A Bonds.

Section 3.15. Designation of Bonds as "Qualified Tax-Exempt Obligations". The City hereby designates the Series 2004 A Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3)(B) of the Code and covenants that the Series 2004 A Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than $10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations issued to currently refund any obligation of the City to the extent the amount of the refunding obligation does not exceed the amount of the refunded obligation and private activity bonds, as defined in Section 141 of the Code, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code), including the Series 2004 A Bonds, have been or shall be issued by the City, including all subordinate entities of the City, during the calendar year 2004.

ARTICLE IV

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Establishment of Funds and Accounts with Depository Bank. Pursuant to this Article IV, the following special funds or accounts are hereby created with (or continued if previously established), and shall be held by, the Depository Bank, segregated and apart from all other funds or accounts of the Depository Bank and the City and from each other:

(1) Revenue Fund (established by the 1986 Ordinance);

(2) Renewal and Replacement Fund (established by the 1986 Ordinance);

(3) Construction Fund;

(4) Costs of Issuance Fund; and

(5) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Bond Commission. Pursuant to this Article IV, the following special funds or accounts are hereby created with (or continued if previously established), and shall be held by, the Bond Commission, separate and apart from all other funds or accounts of the Bond Commission and the City and from each other:

(1) Series 2004 A Bonds Sinking Fund; and

(2) Within the Series 2004 A Bonds Sinking Fund, the Series 2004 A Bonds Reserve Account.

Section 4.03. System Revenues and Application Thereof. So long as any of the Bonds shall be Outstanding and unpaid, the City covenants as follows:

A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt by the City in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the City and the Depository Bank and used only for the purposes and in the manner herein provided.

(1) The City shall first each month pay from the Revenue Fund the Operating Expenses of the System.

(2) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) the amounts required by the Prior Ordinances to pay the interest, if any, on and the principal of the Prior Bonds; (ii) commencing one month prior to the first interest payment date on the Series 2004 A Bonds, for deposit in the Series 2004 A Bonds Sinking Fund, a sum equal to the amount of interest which will become due on the Series 2004 A Bonds on the next ensuing monthly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2004 A Bonds Sinking Fund and the next ensuing monthly interest payment date is less than or greater than 1 month, then such monthly payment shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing interest payment date, the required amount of interest coming due on such date; and provided further that amounts required to be transferred from the Revenue Fund and deposited in the Series 2004 A Bonds Sinking Fund shall be reduced by the amount of any earnings credited to the Series 2004 A Bonds Sinking Fund; and (iii) commencing 1 month prior to the first principal payment date of the Series 2004 A Bonds, for deposit in the Series 2004 A Bonds Sinking Fund, a sum equal to the amount of principal which will mature and become due on the Series 2004 A Bonds on the next ensuing monthly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2004 A Bonds Sinking Fund and the next ensuing monthly principal payment date is less than or greater than 1 month, then such monthly payment shall be increased or decreased proportionately to provide, 1 month prior to the next ensuing monthly principal payment date, the required amount of principal coming due on such date, and provided further, that the amount of such deposits shall be reduced by the amount of any earnings credited to the Series 2004 A Bonds Sinking Fund and not previously credited pursuant to the preceding paragraph.

(3) The City shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Bond Commission (i) the amount required by the Prior

Ordinances for deposit in the respective Reserve Accounts for the Prior Bonds; and (ii) for deposit in the Series 2004 A Bonds Reserve Account, an amount sufficient to remedy any decrease in value of the Series 2004 A Bonds Reserve Account below the Series 2004 A Bonds Reserve Requirement or any withdrawal from the Series 2004 A Bonds Reserve Account, beginning with the first full calendar month following the date on which (a) the valuation of investments in the Series 2004 A Bonds Reserve Account results in a determination that the amount of moneys and the value of the Qualified Investments deposited to the credit of the Series 2004 A Bonds Reserve Account is less than the Series 2004 A Bonds Reserve Requirement, or (b) any amount is withdrawn from the Series 2004 A Bonds Reserve Account for deposit into the Series 2004 A Bonds Sinking Fund. To the extent Net Revenues and any other legally available funds are available therefor, the amount so deposited shall be used to restore the amount of moneys on deposit in the Series 2004 A Bonds Reserve Account to an amount equal to the Series 2004 A Bonds Reserve Requirement to the full extent that such Net Revenues are available; provided, that no payments shall be required to be made into the Series 2004 A Bonds Reserve Account whenever and as long as the amount deposited therein shall be equal to the Series 2004 A Bonds Reserve Requirement.

(4) The City shall next, from the moneys remaining in the Revenue Fund (as previously set forth in the Prior Ordinances and not in addition thereto), on the first day of each month, transfer to the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, 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 Qualified Investments. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required) shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 2004 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2004 A Bonds as the same shall become due, whether by maturity or redemption prior to maturity. Amounts in the Series 2004 A Bonds Reserve Account shall be used only for the purpose of making payments of principal of and interest on the Series 2004 A Bonds when due, when amounts in the Series 2004 A Bonds Sinking Fund are insufficient therefor and for no other purpose.

The City shall not be required to make any further payments into the Series 2004 A Bonds Sinking Fund or the Series 2004 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of Series 2004 A Bonds issued pursuant to this Ordinance then Outstanding, plus the amount of interest due or thereafter to become due on the Series 2004 A Bonds then Outstanding.

As and when additional Bonds ranking on a parity with the Series 2004 A Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at or before maturity and to accumulate a balance in the respective reserve account in an amount equal to the maximum amount of principal and interest which will become due in any year for account of such additional parity Bonds.

The payments into the Series 2004 A Bonds Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Bond Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Ordinance.

The City shall restore any withdrawals from the Series 2004 A Bonds Reserve Account which have the effect of reducing the assets therein below the Series 2004 A Bonds Reserve Requirement from the first Net Revenues available after all required payments have been made in full in the order set forth above.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 1986 B Bonds, the Series 1996 A Bonds and the Series 2004 A Bonds, in accordance with the respective principal amounts then Outstanding.

The Bond Commission is hereby designated as the fiscal agent for the administration of the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Bond Commission from the Revenue Fund by the City at the times provided herein.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

C. The City shall remit from the Revenue Fund to the Bond Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Bond Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay any charges and fees then due.

D. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

E. If on any monthly payment date the Net Revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 4.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

F. All remittances made by the City to the Bond Commission shall clearly identify the fund or account into which each amount is to be deposited.

ARTICLE V

INVESTMENTS; NON-ARBITRAGE; REBATES OF EXCESS INVESTMENT EARNINGS

Section 5.01. Investments. The City shall invest and reinvest, and shall instruct the Bond Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Ordinance in Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, 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 City shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The City may make any and all investments permitted by this section through the bond department of the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under this section:

(A) Qualified Investments acquired for the Series 2004 A Bonds Reserve Account shall mature or be subject to retirement at the option of the holder within not more than 5 years from the date of such investment.

(B) The City shall, or shall cause the Bond Commission to semiannually transfer from the Series 2004 A Bonds Reserve Account to the Series 2004 A Bonds Sinking Fund, any earnings on the moneys deposited therein and any other funds in excess of the requirement therefor; provided, however, that there shall at all times remain on deposit in the Series 2004 A Bonds Reserve Account an amount at least equal to the Series 2004 A Bonds Reserve Requirement.

(C) In computing the amount in any fund or account, Qualified Investments shall be valued at the lower of the cost or the market price, exclusive of accrued interest. Valuation of all funds and accounts shall occur annually, except in the event of a withdrawal from the Series 2004 A Bonds Reserve Account, whereupon it shall be valued immediately after such withdrawal. If amounts on deposit in the Series 2004 A Bonds Reserve Account shall, at any time, be less than the applicable requirement therefor, such deficiency shall be made up from the first available Net Revenues in the order set forth in Section 4.03 hereof.

(D) All amounts representing accrued and capitalized interest shall be held by the Bond Commission, pledged solely to the payment of interest on the Series 2004 A Bonds and invested only in Government Obligations maturing at such times and in such amounts as are necessary to match the interest payments to which they are pledged.

(E) Notwithstanding the foregoing, all moneys deposited in the Series 2004 A Bonds Sinking Fund may be invested by the Bond Commission in the West Virginia "consolidated fund" managed by the West Virginia State Investment Management Board pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended.

Section 5.02. Arbitrage. The City covenants that (i) it will restrict the use of the proceeds of the Series 2004 A Bonds in such manner and to such extent as may be necessary, so that the Series 2004 A Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2004 A Bonds) so that the interest on the Series 2004 A Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.03. Tax Certificate and Rebate. A. The City shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2004 A Bonds. In addition, the City covenants to comply with all Regulations from time to time in effect and applicable to the Series 2004 A Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations,

regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

B. The City shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the City shall deposit, or cause to be deposited, in the 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 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. The City at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the City may deem appropriate in order to assure compliance with this Section 5.03. The City shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 5.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the City fails to make such rebates as required, the City shall pay any and all penalties and the required amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Series 2004 A Bonds from gross income for federal income tax purposes.

ARTICLE VI

ADDITIONAL COVENANTS OF THE CITY

Section 6.01. Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the City and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2004 A Bonds, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Ordinance, the City hereby covenants and agrees with the Holders of the Series 2004 A Bonds, as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2004 A Bonds, or the interest thereon, are Outstanding and unpaid.

Section 6.02. Bonds not to be Indebtedness of the City. The Series 2004 A Bonds shall not be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the Net Revenues of the System, the moneys in the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account therein, and the unexpended proceeds of the Series 2004 A Bonds, all as herein provided. No Holder or Holders of the Series 2004 A Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the City, if any, to pay the Series 2004 A Bonds or the interest thereon.

Section 6.03. Bonds Secured by Parity Pledge of Net Revenues and Moneys in Sinking Fund. The payment of the debt service of all of the Series 2004 A Bonds issued hereunder 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 lien on the Net Revenues in favor of the Holders of the Series 1986 B Bonds and the Series 1996 A Bonds. The Net Revenues derived from the System, in an amount sufficient to pay the interest on and principal of the Series 2004 A Bonds herein authorized, and to make the payments into the Series 2004 A Bonds Sinking Fund, including the Series 2004 A Bonds Reserve Account therein, and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance to the payment of the interest on and principal of the Series 2004 A Bonds herein authorized as the same become due and for the other purposes provided in this Ordinance.

Section 6.04. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the City Clerk, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System

sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the City hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 2004 A Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 2004 A Bonds, including the Series 1986 B Bonds and the Series 1996 A Bonds.

Section 6.05. Operation and Maintenance. The City will operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

Section 6.06. Sale of the System. So long as the Series 1986 B Bonds and the Series 1996 A Bonds are outstanding, the City shall not sell, mortgage, lease or otherwise dispose of the System, or any part thereof, except as provided in the Ordinances authorizing the Series 1986 B Bonds and the Series 1996 A Bonds. Additionally, so long as the Series 2004 A Bonds are outstanding and except as otherwise required by law, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds Outstanding, or to effectively defease this Ordinance in accordance with Article IX hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2004 A Bonds, immediately be remitted to the Bond Commission for deposit in the Series 2004 A Bonds Sinking Fund, and the City shall direct the Bond Commission to apply such proceeds to the payment of principal of and interest on the Series 2004 A Bonds. Any balance remaining after the payment of the Series 2004 A Bonds and interest thereon shall be remitted to the City by the Bond Commission unless necessary for the payment of other obligations of the City payable out of the revenues of the System.

The foregoing provision notwithstanding, the City shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $10,000, the City shall, by Ordinance, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any

such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $10,000 but not in excess of $50,000, the City shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by Ordinance duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of $10,000 and not in excess of $50,000, shall with the written consent of the Authority, be remitted by the City to the Bond Commission for deposit in the Sinking Funds and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of such par value or otherwise. Such payment of such proceeds into the Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance. No sale, lease or other disposition of the properties of the System shall be made by the City if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of $50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in amount of the Bonds then Outstanding and the Consulting Engineers. The City shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 6.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The City shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2004 A Bonds. All obligations issued by the City after the issuance of the Series 2004 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2004 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the City shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2004 A Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the

Series 2004 A Bonds and the interest thereon, if any, in this Ordinance, or upon the System or any part thereof.

Section 6.08. Additional Parity Bonds. So long as the Series 1986 B Bonds and the Series 1996 A Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Ordinances authorizing the Series 1986 B Bonds and the Series 1996 A Bonds shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2004 A Bonds pursuant to this Ordinance, except under the conditions and in the manner herein provided (unless less restrictive than the provisions of the Ordinances authorizing the Series 1986 B Bonds and the Series 1996 A Bonds).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2004 A Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of extensions and improvements to the System or refunding any series of Bonds, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the City Clerk a written statement by an Independent Certified Public Accountant reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

(1) The Bonds then Outstanding;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates adopted by the

City and approved by the Public Service Commission of West Virginia, the period for appeal of which has expired prior to the date of issuance of such additional parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of an Independent Certified Public Accountant, on account of increased rates, rentals, fees and charges for the System adopted by the City, the period for appeal of which has expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the City shall have entered into written contracts for the immediate construction or acquisition of such extensions or improvements, if any, to the System that are to be financed by such Parity Bonds.

All covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The City shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on revenues of the System is subject to the prior and superior liens of the Series 2004 A Bonds on such revenues. The City shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2004 A Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Ordinance with respect to the Bonds then Outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of delivery of such Parity Bonds, and the City shall then be in full compliance with all the covenants, agreements and terms of this Ordinance.

Any certifications requiring computations establishing that debt service coverage is sufficient to support the issuance of parity Additional Bonds or that requisite debt service

savings are available to support the issuance of refunding bonds shall, in all cases, be evidenced by a certificate of an Independent Certified Public Accountant.

No additional bonds, notes, certificates, contracts or any other obligations shall be issued by the City unless no Event of Default shall have occurred and be continuing with respect to the Bonds.

Section 6.09. Insurance and 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 and bonds and worker's compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and in the following amounts:

A. FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the City will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged and destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund.

B. PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 per occurrence to protect the City from claims for bodily injury and/or death and not less than $500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the City from claims arising out of operation or ownership of motor vehicles of or for the System.

C. WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the City and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

D. FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the City.

E. BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the City.

F. FIDELITY BONDS will be provided as to every officer, member and employee of the City or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

Section 6.10. No Free Services. The City will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and, in the event the City or any department, agency, instrumentality, officer or employee thereof shall avail himself or themselves of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the City and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 6.11. Enforcement of Collections. The City will diligently enforce and collect all fees, rates, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid and to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, all delinquent rates, rentals and other changes, 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 and facilities of the System and any services and facilities of the waterworks system, if so owned by the City, to all delinquent users of services and facilities of the System and will not restore such services of the System (or waterworks system) until all billing for charges for the services and facilities of the System, plus reasonable interest penalty charges for the restoration of service, has been fully paid. If the waterworks system is not owned by the City, the City shall enter into a termination agreement with the water provider, 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 6.12. No Competing Franchise. To the extent legally allowable, the City will not grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.13. Books and Records. The City will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds 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, to the extent allowable under and 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 it shall direct.

The City shall file with any Bondholder requesting the same, an annual report within 30 days following the date of receipt of the final audit containing a balance sheet, statement of revenues, expenses, and changes in retained earnings, and statement of cash flows, as prescribed by generally accepted accounting principles.

The City shall also file with any Bondholder requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, and Net Revenues derived from the System.

(B) A statement of account balances in all funds and accounts provided for herein and status of said funds.

The City shall also, at least once a year, cause the books, records and accounts of the System to be completely audited by an Independent Certified Public Accountant in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and shall mail upon request, and

make available generally, the report of said Independent Certified Public Accountant, or a summary thereof, to any Holder or Holders of Bonds issued pursuant to this Ordinance and shall file said report with the Original Purchaser.

Section 6.14. Operating Budget. The City shall annually, at least 45 days preceding the beginning of each Fiscal Year, or at such earlier date, prepare and adopt by resolution a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the City shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of such a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The City shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to any Bondholder who requests the same and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Bondholder or anyone acting for and in behalf of such Bondholder who requests the same.

Section 6.15. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the City and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Division of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Division of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and

C. FEDERAL GUARANTEE PROHIBITION. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2004 A Bonds to be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The City will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2004 A Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The City will take all actions that may be required of it so that the interest on the Series 2004 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2004 A Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on the Series 2004 A Bonds;

(B) If default occurs in the City's observance of any of the covenants, agreements or conditions on its part in this Ordinance or any Supplemental Resolution or in the Series 2004 A Bonds contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the City by any Bondholder;

(C) If the City files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(D) If default occurs with respect to the Series 1986 B Bonds and the Series 1996 A Bonds or the Ordinances authorizing the Series 1986 B Bonds and the Series 1996 A Bonds.

The City must cure any covenant default within 30 days after notice of the default, and failure to pay principal of or interest on the Bonds shall be an immediate event of default.

Section 7.02. Enforcement. Upon the happening and continuance of any Event of Default, any Bondholder may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular:

(A) Bring suit for any unpaid principal or interest then due;

(B) By mandamus or other appropriate proceeding enforce all rights of the Bondholders, including the right to require the City to perform its duties under the Act and this Ordinance;

(C) Bring suit upon the Bonds;

(D) 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 Bondholders; and

(E) By action or bill in equity enjoin any acts in violation of this Ordinance or the rights of the Bondholders.

No remedy by the terms of this Ordinance conferred upon or reserved to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholders hereunder or now or hereafter existing at law or by statute. All rights and remedies of the Holders of the Series 2004 A Bonds shall be on a parity with those of the Holders of the Series 1986 B Bonds and the Series 1996 A Bonds.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Bondholders shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

Section 7.03. Appointment of Receiver. If there be any Event of Default existing and continuing, any Bondholder shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the City, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Bonds, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other Revenues in conformity with the provisions of this Ordinance and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of the System and shall hold, operate, maintain, manage and control such facilities, and each and every part thereof, and in the name of the City exercise all the rights and powers of the City with respect to said facilities as the City itself might do.

Whenever all that is due upon the Bonds issued pursuant to this Ordinance and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and accounts 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 Bondholder 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, 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 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 the Holders of the Bonds issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the City and the Bondholders, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the City, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Section 7.04. Restoration of City and Bondholder. In case any Bondholder shall have proceeded to enforce any right under this Ordinance by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the City and such Bondholder shall be restored to their former positions and rights hereunder, and all rights and remedies of such Bondholder shall continue as if no such proceedings had been taken.

ARTICLE VIII

REGISTRAR AND PAYING AGENT

Section 8.01. Appointment of Registrar. The Registrar for the Series 2004 A 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 8.02. Responsibilities of Registrar. The recitals of fact in the Series 2004 A Bonds shall be taken as statements of the City, and the Registrar shall not be responsible for their accuracy. The Registrar shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of any Series 2004 A Bonds by the City. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication on the Series 2004 A Bonds. The Registrar and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 8.01.

Section 8.03. Evidence on Which Registrar May Act. Except as otherwise provided by Section 10.02, the Registrar shall be protected in acting upon any notice, ordinance, 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 8.04. 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 8.05. Certain Permitted Acts. The Registrar may become the owner of or may deal in Series 2004 A Bonds as fully and with the same rights it would have if it were not Registrar. To the extent permitted by law, the Registrar may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or effect or aid in any reorganization growing out of the enforcement of the Series 2004 A Bonds or this

Ordinance, whether or not any such committee shall represent the Holders of a majority in principal amount of the Series 2004 A Bonds Outstanding.

Section 8.06. 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 and mailing such notice to each Bondholder specifying the date when such resignation shall take effect, within 20 days after the giving of such written notice. A copy of such notice shall also be mailed to each 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 bondholders, in which event such resignation shall take effect immediately.

Section 8.07. Removal. The Registrar may be removed at any time by the City or by the Holders of a majority in principal amount of the Series 2004 A Bonds then Outstanding by an instrument or concurrent instruments in writing signed and duly acknowledged by the City or by such Bondholders or their attorneys duly authorized in writing and delivered to the City, as the case may be. Copies of each such instrument shall be delivered by the City to the Registrar.

Section 8.08. 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 Holders of a majority in principal amount of the Series 2004 A Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Bondholders 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 Bondholders. The City shall mail to each Bondholder notice of any such appointment within 20 days after the effective date of such appointment. A copy of such notice shall also be mailed to each 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 Bondholders. 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 Bondholder 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 8.09. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys, books and records held by it to its successor.

Section 8.10. 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 8.08.

Section 8.11. Adoption of Authentication. In case any of the Series 2004 A 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 Series 2004 A 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.

Section 8.12. Paying Agent. The Bond Commission shall serve as the Paying Agent. Any alternate Paying Agent must be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance. Such alternate Paying Agent shall signify its acceptance of the duties and obligations imposed upon it pursuant hereto by executing and delivering to the City a written acceptance thereof.

Each Paying Agent shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by such Paying Agent in connection with such services solely from moneys available therefor.

Any bank, trust company or national banking association with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Ordinance. If the position of Paying Agent shall become vacant for any reason, the City shall, within 30 days thereafter, appoint a bank, trust company or national banking association located in the same city as such Paying Agent to fill such vacancy; provided, however, that, if the City shall fail to appoint such Paying Agent within said period, the Bond Commission, a court of competent jurisdiction or a majority of the Bondholders may make such appointment.

The Paying Agent shall enjoy the same protective provisions in the performance of its duties hereunder as are specified in this Article VIII with respect to the Registrar, insofar as such provisions may be applicable.

Notice of the appointment of successor or additional Paying Agents or fiscal agents shall be given in the same manner as provided by Section 8.08 hereof with respect to the appointment of a successor Registrar.

All moneys received by the Paying Agent shall, until used or applied as provided in this Ordinance, be held in trust for the purposes for which they were received.

ARTICLE IX

DEFEASANCE; DISCHARGE OF PLEDGE OF ORDINANCE

Section 9.01. Defeasance; Discharge of Pledge of Ordinance. If the City shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 2004 A Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then this Ordinance and the pledges of the Net Revenues and other moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the City on behalf of the Holders of the Series 2004 A Bonds made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied, except as may be necessary to assure the exclusion of interest on the Series 2004 A Bonds from gross income for federal income tax purposes.

The Series 2004 A Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on the Series 2004 A Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 2004 A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Bond 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 Bond 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 the Series 2004 A Bonds on and prior to the maturity date thereof, or if the City irrevocably determines to redeem any of the Series 2004 A Bonds prior to the maturity thereof, on and prior to said Redemption Date. Neither securities nor moneys deposited with the Bond 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 the Series 2004 A Bonds; provided, that any cash received from such principal, redemption premium, if any, and interest payments on such securities deposited with the Bond 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 the Series 2004 A 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 Bond 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, as such term is limited by the provisions in Section 1.01 hereof or such additional securities as shall be set forth in the Supplemental Resolution.

B. The authority of a person or persons to execute any such instrument on behalf of a corporate Bondholder may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of such corporation with a corporate seal affixed, and is attested by a person purporting to be its secretary or assistant secretary.

C. The amount of fully registered Bonds held by a person executing any instrument as a Bondholder, the date of his holding such Bonds and the numbers and other identification thereof, shall be confirmed by the Bond Register.

Any request, consent or other instrument executed by the Holder of any Bond shall bind all future Holders and owners of such Bond in respect of anything done or suffered to be done hereunder by the City or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the City or any Bondholder, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Ordinance shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Bonds. All Bonds purchased or paid shall, if surrendered to the City, be canceled and delivered to the Registrar, or, if surrendered to the Registrar, be canceled by it. No such Bonds shall be deemed Outstanding under this Ordinance and no Bonds shall be issued in lieu thereof. All such Bonds shall be canceled and upon order of the City shall be destroyed, and a certificate evidencing such destruction shall be delivered to the City.

Section 10.05. Failure to Present Bonds. Anything in this Ordinance to the contrary notwithstanding, any moneys held by the Bond Commission or a Paying Agent in trust for the payment and discharge of any of the Bonds which remain unclaimed for 1 year after the date on which such Bonds have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the City be paid by the Bond Commission or said Paying Agent to the City as its absolute property and free from trust, and the Bond Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Holders of such Bonds shall look only to the City for the payment of such Bonds; provided, however, that, before making any such payment to the City, the Registrar, if so advised by the Bond Commission, or said Paying Agent shall send to the Holder, at the address listed on the Bond Register, by certified mail, a notice that such moneys remain unclaimed and that, after a date named in said notice, which date shall be not

less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the City.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the City, the Registrar, the Paying Agent, the Depository Bank or the Original Purchaser shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

CITY

The City of Elkins
City Hall
401 Davis Avenue
Elkins, West Virginia 26241
Attention: Mayor

REGISTRAR AND DEPOSITORY BANK

Branch Banking & Trust Co.
501 Tennessee Avenue
Charleston, WV 25302
Attention: Russell R. Akers, Jr.

PAYING AGENT

West Virginia Municipal Bond Commission
8 Capitol Street
Suite 500
Charleston, WV 25301

ORIGINAL PURCHASER

Branch Banking & Trust Co.
501 Tennessee Avenue
Charleston, WV 25302
Attention: Russell R. Akers, Jr.

Any party listed above may change such address listed for it at any time upon written notice of change sent by United States mail, postage prepaid, to the other parties.

Section 10.07. No Personal Liability. No member of the City or officer or employee of the City shall be individually or personally liable for the payment of the

principal of or the interest on any Bond, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Ordinance.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Ordinance and of all Bonds issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the City, the Registrar, the Paying Agent, the Holders of the Series 2004 A Bonds and the Original Purchaser, any right, remedy or claim under or by reason of this Ordinance. All the covenants, stipulations, promises and agreements contained in this Ordinance by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Registrar, the Paying Agent, the Holders of the Series 2004 A Bonds and the Original Purchaser.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 10.11. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.12. Conflicting Provisions Repealed. All orders, Ordinances or parts thereof in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed; provided that, in the event of any conflict between this Ordinance and the Ordinances authorizing the Series 2001 B Bonds and the Series 1996 A Bonds, the Ordinances authorizing the Series 2001 B Bonds and the Series 1996 A Bonds shall control, unless less restrictive, so long as the Series 2001 B Bonds and the Series 1996 A Bonds are Outstanding.

Section 10.13. Covenant of Due Procedure, Etc. The City covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, City Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 10.14. Effective Date. This Ordinance shall take effect immediately upon enactment.

Section 10.15. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in, The Inter-Mountain, a newspaper of general circulation in The City of Elkins, no newspaper being published therein, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading:	-	April 20, 2004
Passed on Second Reading:	-	May 6, 2004
Passed on Final Reading Following Public Hearing:	-	May 20, 2004

Enacted this 20th day of May, 2004.

By: Judith A. Berge
Mayor

CERTIFICATION

The undersigned, being the duly qualified, elected and acting City Clerk of The City of Elkins, does hereby certify that the foregoing Ordinance was duly adopted and enacted by the City Council of The City of Elkins following a public hearing thereon at a regular meeting duly held, pursuant to proper notice thereof, at 7:00 p.m. on May 20, 2004, at the City Hall, 401 Davis Avenue, Elkins, West Virginia, a quorum being present and acting throughout, and which Ordinance has not been repealed, rescinded, modified, amended or revoked and is a true, correct and complete copy thereof.

Dated: June 18, 2004.

Philip J. Grozzaine
City Clerk

EXHIBIT A - BOND FORM

No. AR-_____ $_____

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF ELKINS
(WEST VIRGINIA)
SEWER REFUNDING REVENUE BOND,
SERIES 2004 A

INTEREST RATE	MATURITY DATE	BOND DATE

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF ELKINS, a municipal corporation and political subdivision of the State of West Virginia in Randolph 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 the Bondholder specified above, or registered assigns (the "Bondholder"), on the Maturity Date specified above, the Principal Amount specified above and solely from such special funds also to pay interest on said Principal Amount on the dates and in the amounts set forth on the Debt Service Schedule attached hereto as Exhibit A, and incorporated herein by reference. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the hereinafter described Ordinance.

Principal of and Interest accruing on this Bond shall be payable by check or draft mailed by _____, _____, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Bondholder hereof as of the applicable Record Date (each _____ 15 and _____ 15) or, in the event of a default in the payment of Bonds, that special record date to be fixed by the hereinafter named Registrar by notice given to the Bondholders not less than 10 days prior to said special record date at the address of such Bondholder as it appears on the registration books of the City maintained by _____, _____, West Virginia, as registrar (in such capacity, the "Registrar").

This Bond is one of an issue of a series of bonds, in the aggregate principal amount of $_____ designated "The City of Elkins (West Virginia) Sewer Refunding Revenue Bonds, Series 2004 A" (the "Bonds"), of like tenor and effect, except as to number, denomination, date of maturity and interest rate, dated _____ 1, 2004, the proceeds of which are to be used, together with other funds of the City, (i) to current refund all of the Sewer Revenue Bonds, Series 2001 A, dated September 13, 2001, of the City outstanding in the total aggregate principal amount of $_____ (the "Series 2001 A Bonds"), which were issued to currently refund previous bonds issued to finance a portion of the cost of acquisition and construction of the public sewerage system of the City (the "System"); (ii) to fund a reserve account for the Bonds; (iii) to pay certain costs of issuance of the Bonds and related costs; and (iv) to pay the costs of acquisition and construction of certain additions, betterments and improvements to the System. 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 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the City on _____, 2004, and supplemented by a supplemental Resolution duly adopted by the City on _____, 2004 (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of the Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Ordinance. Reference is hereby made to the Ordinance, as the same may be amended and supplemented from time to time, for a description of the rights, limitations of rights, obligations, duties and immunities of the City, the Registrar, the Paying Agent, the Bondholders of the Bonds and the Bondholders of any subsequently issued additional bonds. Executed counterparts or certified copies of the Ordinance are on file at the office of the City.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE FOLLOWING OUTSTANDING SEWER REVENUE BONDS OF THE CITY:

(i) SEWER REVENUE BONDS, SERIES 1986 B, DATED APRIL 24, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $517,001 (THE "SERIES 1986 B BONDS"); AND

(ii) SEWER REVENUE BONDS, SERIES 1996 A (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 22, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $600,000 (THE "SERIES 1996 A BONDS").

At the option of the City, the Bonds may be prepaid, in whole, at any time, upon 30 days' written notice to the Registered Owner, at the price of 101% of the principal amount thereof to be prepaid plus interest accrued thereon to the date fixed for prepayment.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Ordinance) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 1986 B Bonds and the Series 1996 A Bonds, and from moneys in the reserve account created under the Ordinance for the Bonds (the "Series 2004 A Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and 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, except from said special fund provided from the Net Revenues, the moneys in the Series 2004 A Bonds Reserve Account and unexpended proceeds of the Bonds. 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, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Series 1986 B Bonds and the Series 1996 A Bonds.

All moneys received from the sale of this Bond shall be applied solely to refund the Series 2001 A Bonds, to the reserve account for the Bonds, pay costs of acquisition and construction of certain additions, betterments and improvements to the System and pay costs of issuance hereof, 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 in 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 said City, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by said City for the prompt payment of the principal of and interest on the Bonds of which this Bond is one.

This Bond, under the provisions 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, but may be transferred only upon the surrender hereof at the office of the Registrar and otherwise as provided by the Ordinance.

This Bond is, under the Act, exempt from taxation by the State of West Virginia, and the other taxing bodies of the State.

This Bond has been designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

This Bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

All provisions of the Ordinance and the statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, The City of Elkins (WEST VIRGINIA) has caused this Bond to be signed by its Mayor, and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused this Bond to be dated as of the Bond Date specified above.

[SEAL]

By: (Manual or Facsimile Signature)
Mayor

ATTEST:

By: (Manual or Facsimile Signature)
City Clerk

$1,022,000
The City of Elkins
Sewer Refunding Revenue Bonds, Series 2004 A

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE CITY OF ELKINS SEWER REFUNDING REVENUE BONDS, SERIES 2004 A; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH BONDS TO DAVIS TRUST COMPANY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Council (the "Governing Body") of The City of Elkins (the "Issuer") has duly and officially enacted an Ordinance on May 20, 2004 (the "Ordinance"), entitled:

AN ORDINANCE AUTHORIZING THE REFUNDING OF THE SEWER REFUNDING REVENUE BONDS, SERIES 2001 A, OF THE CITY OF ELKINS; THE ISSUANCE OF SEWER REFUNDING REVENUE BONDS, SERIES 2004 A, OF THE CITY IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN $1,200,000, THE PROCEEDS OF WHICH, TOGETHER WITH OTHER FUNDS OF THE CITY, SHALL BE EXPENDED FOR SUCH REFUNDING AND TO PAY COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATING THERETO; AUTHORIZING THE SALE

AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

WHEREAS, the capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance when used herein;

WHEREAS, the Ordinance provides for the refunding of the Issuer's Sewer Refunding Revenue Bonds, Series 2001 A, dated September 13, 2001 (the "Series 2001 A Bonds"), and the issuance of the Sewer Refunding Revenue Bonds, Series 2004 A, of the Issuer, in an aggregate principal amount not to exceed $1,200,000 (the "Series 2004 A Bonds" or the "Bonds"), for the purposes of paying a portion of the costs of such refunding, funding a reserve account for the Series 2001 A Bonds, and paying the costs of issuance thereof, all in accordance with Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act"); and in the Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds should be established by a supplemental resolution, and that other matters relating to the Bonds be herein provided for;

WHEREAS, as set forth in the Ordinance, the Bonds were initially proposed to be purchased by Branch Banking & Trust Company, Charleston, West Virginia, but are now to be purchased by Davis Trust Company, Elkins, West Virginia (the "Original Purchaser"), pursuant to a Commitment Letter dated May 18, 2004; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ELKINS:

Section 1. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Refunding Revenue Bonds, Series 2004 A, of the Issuer, originally represented by a single bond, numbered AR-1, in the original principal amount of $1,022,000. The Bonds shall be dated the date of delivery, shall finally mature March 1, 2019, and shall bear interest at the rate

of 4.25% per annum, provided that, in the event the Bonds are determined to be taxable by the Internal Revenue Service, the interest shall be at the rate of 7.0% per annum. The principal of and interest on the Bonds shall be payable on the first day of each month, commencing July 1, 2004, in the amounts set forth in the "Debt Service Schedule" incorporated in and made a part of the Bonds. The Bonds may be prepaid in whole on any scheduled payment date, upon 30 days' written notice to the Registered Owner, at the price of 101% of the principal amount thereof to be prepaid, plus interest accrued thereon to the date fixed for prepayment.

Section 2. The Bonds shall be sold to Davis Trust Company, Elkins, West Virginia and all references in the Ordinance to "Branch Banking & Trust Company" shall be deleted, and substituted therefor shall be "Davis Trust Company." The Bonds shall be registered in the name of Davis Trust Company. The price of the Bonds shall be $1,022,000 (100% of par value), there being no interest accrued thereon.

Section 3. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Ordinance.

Section 4. The Registrar Agreement by and between the Issuer and the Registrar designated herein, to be dated as of the date of delivery of the Series 2004 A Bonds, substantially in the form submitted to this meeting, shall be and the same is hereby approved. The Mayor shall execute and deliver the Registrar Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Registrar Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 5. The Issuer hereby appoints and designates Davis Trust Company, Elkins, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Ordinance and approves and accepts the Registrar 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 by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved.

Section 6. The Issuer hereby appoints and designates the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent (the "Paying Agent") for the Bonds under the Ordinance and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed and approved.

Section 7 The Issuer hereby appoints and designates Davis Trust Company, Elkins, West Virginia, to serve as Depository Bank under the Ordinance.

Section 8. The firm of Steptoe & Johnson PLLC, Charleston, West Virginia, is hereby appointed bond counsel to the Issuer in connection with the issuance of the Series 2004 A Bonds.

Section 9. Proceeds of the Bonds which, together with other moneys of the Issuer in the Series 2001 A Bonds Sinking Fund and the Series 2001 A Bonds Reserve Account, shall be sufficient to pay the outstanding principal of , and interest on, the Series 2001 A Bonds as of June 18, 2004, shall be deposited with the Commission.

Section 10. Moneys currently on deposit in the Reserve Account for the Series 2001 A Bonds in an amount sufficient to fully fund the Series 2004 A Bonds Reserve Account shall be deposited with the Paying Agent in the Series 2004 A Bonds Reserve Account.

Section 11. The remaining proceeds of the Bonds shall be deposited with the Depository Bank in the Costs of Issuance Fund for payment of the costs of issuance of the Bonds. All costs of issuance shall be paid within 60 days from the date of delivery of the Bonds. Following payment of all costs of issuance, any remaining proceeds of the Bonds shall be deposited in the Construction Fund and applied solely to capital improvements for the System or for payment of the next interest and principal due on the Bonds and shall be fully expended within six months from the date of delivery of the Bonds.

Section 12. The Issuer hereby approves the costs of issuance of the Series 2004 A Bonds and authorizes the payment of the same.

Section 13. Based upon the actual principal amount, maturity schedule and interest rates for the Series 2004 A Bonds, it is hereby determined that the Series 2004 A Bonds show a net savings to the Issuer after deducting all expenses of the refunding. Prior to delivery of the Series 2004 A Bonds, the Issuer shall have obtained from Tetrick, Bartlett & Co., Certified Public Accountants, or such other independent certified public accountant acceptable to the Mayor, a certification that the amount of savings stated to be achieved by the refunding shall in fact be correct, based upon their review, comparison and analysis of the net interest cost in dollars of the Series 2004 A Bonds and the net interest cost in dollars of the Series 2001 A Bonds. The Mayor is hereby authorized and directed to employ Tetrick, Bartlett & Co., Certified Public Accountants, Clarksburg, West Virginia, or such other independent certified public accountant satisfactory to Bond Counsel, to supply the certification required herein and to take other actions required in connection with the refunding.

Section 14. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Ordinance approved and provided for, to the end that the Bonds may be delivered to the Original Purchaser on or about June 18, 2004.

Section 15. The prepayment and refunding of the Series 2001 A Bonds and the financing thereof in part with proceeds of the Bonds will result in present value debt service

savings for the Issuer, are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 16. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and the Regulations to be promulgated thereunder.

Section 17. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this June 17, 2004,

By: /s/ Judith A. Guye
Mayor

By: /s/ Philip J. Grazaini
City Clerk

CERTIFICATION

The undersigned, being the duly qualified, elected and acting City Clerk of The City of Elkins, does hereby certify that the foregoing Supplemental Resolution was duly adopted by the City Council of The City of Elkins at a regular meeting duly held, pursuant to proper notice thereof, on June 17, 2004, a quorum being present and acting throughout, and which Supplemental Resolution has not been repealed, rescinded, modified, amended or revoked and is a true, correct and complete copy thereof as of this June 18, 2004.

By: /s/ Philip J. Graziani
City Clerk

06/10/04
255620.00009

THE CITY OF ELKINS
SEWER REVENUE BONDS, SERIES 2006 A
(WEST VIRGINIA SRF PROGRAM)

BOND ORDINANCE

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THE CITY OF ELKINS

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING SEWERAGE SYSTEM REFUNDING BOND ANTICIPATION NOTES, SERIES 2006; AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF ELKINS AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $8,588,400 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2006 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF ELKINS:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Elkins (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and improvements to the existing public sewerage system of the Issuer, consisting of upgrading the existing City of Elkins wastewater treatment plant to a 4.99 mgd treatment facility through the replacement of the existing screens and grit removal equipment; addition of a new septage discharge lift station; addition of a new pretreatment building; addition of two (2) new blowers and a splitter box and upgrade of the existing splitter boxes at the existing oxidation ditch; addition of a new third clarifier and baffles to the existing clarifiers in addition to a new scum pump station; addition of a new post aeration aerator; improvements to the existing ultraviolet disinfection system; addition of a new RAS/WAS lift station; addition of a new sludge decant tank; replacement of the existing two (2) sludge filter belt presses; and expansion of the existing laboratory, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification, or disposal of liquid or solid wastes, residential sewage or industrial waste (the existing public sewerage system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer has heretofore temporarily financed the design of the Project by the issuance of the Sewerage System Refunding Bond Anticipation Notes, Series 2006, dated September 8, 2006, issued in the original aggregate principal amount of $250,000 of which $250,000 principal amount remains outstanding (the "Prior Notes").

D. The Prior Notes were issued pursuant to an ordinance of the Issuer enacted on September 7, 2006 (the "Prior Notes Ordinance").

E. It is deemed necessary and desirable for the Issuer to refund the Prior Notes to effect the release and termination of certain restrictions, conditions and limitations imposed in the Prior Notes Ordinance.

F. The Issuer intends (i) to refund the Prior Notes and (ii) to permanently finance the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund Program (the "SRF Program"), which the Authority administers pursuant to the Act.

G. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2006 A (West Virginia SRF Program), in the total aggregate principal amount of not more than $8,588,400 (the "Series 2006 A Bonds"), initially to be represented by a

single bond, to permanently finance the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the SRF Program; the costs of refunding the Prior Notes; interest upon the Series 2006 A Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction of the Project; amounts which may be deposited in the Series 2006 A Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; fees and expenses of the Authority, including the SRF Administrative Fee (as hereafter defined); discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2006 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the acquisition or construction of the Project and the placing of same in operation; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2006 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

H. The period of usefulness of the System after completion of the Project is not less than 20 years.

I. It is in the best interests of the Issuer that its Series 2006 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), in form satisfactory to the Issuer, the Authority, and the DEP (the "Loan Agreement"), to be approved hereby if not previously approved by resolution of the Issuer.

J. Upon payment of the Prior Notes, there will be outstanding obligations of the Issuer which will rank on a parity with the Series 2006 A Bonds as to liens, pledge, source of and security for payment, being the Issuer's Subordinate Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority), dated April 28, 1986, issued in the original aggregate principal amount of $517,001 (the "Series 1986 B Bonds"); the Sewer Revenue Bonds, Series 1996 A, (West Virginia SRF Program) dated August 22, 1996, issued in the original aggregate principal amount of $300,000 (the "Series 1996 A Bonds"); and the Sewer Refunding Revenue Bonds, Series 2004 A, dated June 18, 2004, issued in the original aggregate principal amount of $1,022,000, (the "Series 2004 A Bonds" and collectively with the Series 1986 B Bonds and the Series 1996 A Bonds, the "Prior Bonds").

The Series 2006 A Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all other respects.

Prior to the issuance of the Series 2006 A Bonds, the Issuer will, to the extent required by the Prior Ordinances, obtain the written consent of the Holders of the Prior Bonds to the issuance of the Series 2006 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System. The Issuer is in compliance with all covenants of the Prior Bonds and Prior Ordinances.

K. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Bonds (as hereinafter defined) and to make all payments into all funds, accounts and other payments provided for herein.

L. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition and construction of the Project and the operation of the System and issuance of the Series 2006 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a certificate of public convenience and necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2006 A Bonds or such final order will not be subject to appeal.

M. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Governing Body to issue the Series 2006 A Bonds for the purposes set forth herein.

N. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2006 A Bonds by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Series 2006 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means, collectively, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2006 A Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP under the Act.

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Board" means the Sanitary Board of the Issuer.

"Bondholder," "Holder of the Bonds," "Holder," "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Loan Agreement" means the Loan Agreement heretofore entered into, or to be entered into, by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2006 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means, collectively, the Series 2006 A Bonds, the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"Closing Date" means the date upon which there is an exchange of the Series 2006 A Bonds for all or a portion of the proceeds of the Series 2006 A Bonds from the Authority and the DEP.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Completion Date" means the completion date of the Project, as defined in the SRF Regulations.

"Consulting Engineers" means Burgess & Niple, Inc., Parkersburg, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the cost of acquisition and construction of the Project.

"DEP" means the West Virginia Department of Environmental Protection, or any other agency, board or department of the State that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Council of the Issuer, as it may now or hereafter be constituted.

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

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided that, "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of,

capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Investment Property" means

(A) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code),

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

Except as provided in the following sentence, the term "Investment Property" does not include any tax-exempt bond. With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C) of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

"Issuer" means The City of Elkins, a municipal corporation and political subdivision of the State of West Virginia, in Randolph County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2006 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2006 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2006 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Nonpurpose Investment" means any Investment Property as defined in Section 148(b) of the Code, that is not a purpose investment.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, the SRF Administrative Fee, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds and Prior Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond or Prior Bonds cancelled by the Bond Registrar or the registrar for Prior Bonds at or prior to said date; (ii) any Bond or Prior Bonds for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid in accordance with the resolution authorizing the issuance thereof; and (v) for purposes of consents or other action by a specified percentage of Bondholders, or holders of Prior Bonds, any Bonds or Prior Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or other entity or authority designated as such for the Series 2006 A Bonds in the Supplemental Resolution.

"Prior Notes" means the Issuer's Sewerage System Refunding Bond Anticipation Notes, Series 2006, described in Section 1.02C hereof.

"Prior Notes Ordinance" means the ordinance authorizing issuance of the Sewerage System Refunding Bond Anticipation Notes, Series 2006.

"Prior Bonds" means, collectively, the Issuer's (i) Subordinate Sewer Revenue Bonds, Series 1986 B, dated April 28, 1986, issued in the original aggregate principal amount of $517,001; (ii) Sewer Revenue Bonds, Series 1996 A, dated August 22, 1996, issued in the original aggregate principal amount of $300,000; and (iii) Sewer Refunding Revenue Bonds, Series 2004 A, dated June 18, 2004, issued in the original aggregate principal amount of $1,022,000.

"Prior Ordinances" means, collectively, the ordinances of the Issuer, including all amendments and supplements thereto, authorizing the issuance of the Prior Bonds.

"Private Business Use" means 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.

"Project" means the Project as described in Section 1.02B hereof.

"Qualified Investments" means and includes any of the following:

(a) Government Obligations;

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

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

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

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or

Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

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

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

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

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

"Recorder" means the Recorder of the Issuer.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond is registered.

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Ordinances and continued hereby.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Series 2006 A Bonds and the Prior Bonds.

"Reserve Requirement" means, collectively, the respective amount required to be on deposit in any Reserve Account for the Prior Bonds and the Series 2006 A Bonds.

"Revenue Fund" means the Revenue Fund created by the Prior Ordinances and continued hereby.

"Series 1986 B Bonds" means the Issuer's Subordinate Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority), described in Section 1.02J hereof.

"Series 1996 A Bonds" means the Issuer's Sewer Revenue Bonds, Series 1996 A, described in Section 1.02J hereof.

"Series 2004 A Bonds" means the Issuer's Sewer Refunding Revenue Bonds, Series 2004 A, described in Section 1.02J hereof.

"Series 2006 A Bonds" means Sewer Revenue Bonds, Series 2006 A (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

"Series 2006 A Bonds Construction Trust Fund" means the Series 2006 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2006 A Bonds Reserve Account" means the Series 2006 A Bonds Reserve Account established by Section 5.02 hereof.

"Series 2006 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2006 A Bonds in the then current or any succeeding year.

"Series 2006 A Bonds Sinking Fund" means the Series 2006 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective sinking funds established for the Prior Bonds and the Series 2006 A Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

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

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2006 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2006 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligation of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

"System" means, collectively, the complete existing municipal sewage treatment and collection system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any and all additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, both within and without the Issuer.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

Additional terms and phrases are defined in this Ordinance as they are used. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT AND REFUNDING OF THE PRIOR NOTES

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, including the refunding of the Prior Notes, at an estimated cost of not to exceed $8,588,400, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2006 A Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the DEP and the Authority.

The cost of the Project, including the refunding of the Prior Notes, is estimated not to exceed $8,588,400, of which $8,588,400 will be obtained from proceeds of the Series 2006 A Bonds.

Section 2.02. Authorization of Refunding of the Prior Notes. There is hereby authorized and ordered the payment in full of the entire outstanding principal of and all accrued interest on the Prior Notes on the Closing Date. The cost of the refunding will be obtained from the proceeds of the Series 2006 A Bonds. Upon payment in full of the Prior Notes, the pledge of funds in favor of the holders of the Prior Notes imposed by the Prior Notes Ordinance and the monies in the funds and accounts created by the Prior Notes Ordinance pledged to the payment of the Prior Notes are hereby ordered terminated, discharged and released.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF BOND PURCHASE AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of funding a reserve account for the Series 2006 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance 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 negotiable Series 2006 A Bonds of the Issuer. The Series 2006 A Bonds shall be issued as a single bond, designated "Sewer Revenue Bond, Series 2006 A (West Virginia SRF Program)", in the principal amount of not more than $8,588,400, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2006 A Bonds remaining after funding of the Series 2006 A Bonds Reserve Account (if funded from Bond proceeds) and capitalizing interest on the Series 2006 A Bonds, if any, shall be deposited in or credited to the Series 2006 A Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2006 A Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2006 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2006 A Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2006 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2006 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2006 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest, if any, as of the date specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2006 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2006 A Bonds shall cease to be such officer of the Issuer before the Series 2006 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2006 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of the authorization of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2006 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2006 A Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2006 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2006 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2006 A Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Series 2006 A Bonds.

The registered Series 2006 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly

authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2006 A Bonds or transferring the registered Series 2006 A Bonds are exercised, all Series 2006 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2006 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2006 A Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2006 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2006 A Bonds or, in the case of any proposed redemption of Series 2006 A Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2006 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2006 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No Holder or Holders of the Series 2006 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2006 A Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Positions with respect to Prior Bonds. The payment of the debt service of all Series 2006 A Bonds shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived

from the operation of the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2006 A Bonds and the Prior Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2006 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2006 A Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 2006 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2006 A Bonds to the original purchasers;

C. An executed and certified copy of the Bond Legislation;

D. An executed copy of the Loan Agreement; and

E. The unqualified approving opinion of bond counsel on the Series 2006 A Bonds.

Section 3.10. Form of Bonds. The text of the Series 2006 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2006 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF ELKINS
SEWER REVENUE BONDS,
SERIES 2006 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-____ $_____

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF ELKINS, a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of _____ DOLLARS ($_____), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached 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 _____ 1,200____, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The interest and SRF Administrative fee (as defined in the hereinafter describe Bond Legislation) on this Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____, 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 such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement (the "Bond Purchase Agreement") by and among the Issuer, the Authority and the DEP, dated _____, 2006.

This Bond is issued (i) to provide funds for the refunding of the Issuer's Sewerage System Refunding Bond Anticipation Notes, Series 2006, dated September 8, 2006, issued in the original aggregate principal amount of $250,000 of which $250,000 principal amount remains outstanding (the "Prior Notes"); (ii) to pay the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); [(iii) to fully fund the Series 2006 A Bonds Reserve Account;] and (iv) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or 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 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2006, and a Supplemental Resolution duly adopted by the Issuer on _____, 2006 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S SUBORDINATE SEWER REVENUE BONDS, SERIES 1986 B, DATED APRIL 28, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $517,001 (THE "SERIES 1986 B BONDS"); THE ISSUER'S SEWER REVENUE BONDS, SERIES 1996 A, DATED AUGUST 22, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $300,000 (THE "SERIES 1996 A BONDS"); AND THE ISSUER'S SEWER REFUNDING REVENUE BOND, SERIES 2004 A, DATED JUNE 18, 2004, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,022,000, (THE "SERIES 2004 A BONDS") (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the Holders of the Prior Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2006 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest, if any, hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2006 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the

use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bonds; provided however, that so long as there exists in the Series 2006 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or junior to the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation), 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.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

This Bond is, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality, political subdivision or agency thereof, except inheritance, estate and transfer taxes.

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 Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System

has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF ELKINS has caused this Bond to be signed by its Mayor, and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated _____, 2006.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2006 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 2006.

THE HUNTINGTON NATIONAL BANK,
as Registrar

_____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

	AMOUNT	DATE		AMOUNT	DATE
(1)	$		(19)	$	
(2)	$		(20)	$	
(3)	$		(21)	$	
(4)	$		(22)	$	
(5)	$		(23)	$	
(6)	$		(24)	$	
(7)	$		(25)	$	
(8)	$		(26)	$	
(9)	$		(27)	$	
(10)	$		(28)	$	
(11)	$		(29)	$	
(12)	$		(30)	$	
(13)	$		(31)	$	
(14)	$		(32)	$	
(15)	$		(33)	$	
(16)	$		(34)	$	
(17)	$		(35)	$	
(18)	$		(36)	$	

TOTAL $_____

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

_____

In the presence of:

_____

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2006 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Bond Legislation.

Section 3.12. "Amended Schedule" Filing. Within 60 days following the Completion Date of the Project, the Issuer will file with the Authority and the DEP a schedule, the form of which will be provided by the DEP, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

ARTICLE V

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

(1) Revenue Fund (established by the Prior Ordinances);

(2) Renewal and Replacement Fund (established by the Prior Ordinances);

(3) Cost of Issuance Fund (established by the Prior Ordinances);

(4) Rebate Fund (established by the Prior Ordinances); and

(5) Series 2006 A Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

(1) Series 2006 A Bonds Sinking Fund; and

(2) Within the Series 2006 A Bonds Sinking Fund, the Series 2006 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinances and this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation and in the Prior Ordinances. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following manner order of priority:

(1) The Issuer shall first, each month, pay from the Revenue Fund to pay current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit (i) to the Commission the amounts required by the Prior Ordinances to pay interest on, if any, the Prior Bonds; and (ii) commencing 3 months prior to the first date of payment of interest on the Series 2006 A Bonds, for deposit in the Series 2006 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will mature and become due on the Series 2006 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2006 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit (i) to the Commission the amounts required by the Prior Ordinances to the principal of the Prior Bonds; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 2006 A Bonds, for deposit in the Series 2006 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2006 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2006 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) the amount required by the Prior Ordinances for deposit in the respective Reserve Accounts of the Prior Bonds; and (ii) commencing 3 months

prior to the first date of payment of principal of the Series 2006 A Bonds, if not fully funded upon issuance of the Series 2006 A Bonds, for deposit in the Series 2006 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2006 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2006 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 2006 A Bonds Reserve Requirement.

(5) The Issuer 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 Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

Monies in the Series 2006 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2006 A Bonds as the same shall become due. Monies in the Series 2006 A Bonds Reserve Account shall be used only for the purposes of paying principal of and interest, if any, on the Series 2006 A Bonds as the same shall come due, when other monies in the Series 2006 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2006 A Bonds Sinking Fund and the Series 2006 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2006 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 2006 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2006 A Bonds Reserve Account which result in a reduction in the balance of the Series 2006 A Bonds Reserve Account to below the Series 2006 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the priority as set forth above.

As and when additional Bonds ranking on a parity with the Series 2006 A Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2006 A Bonds Sinking Fund or into the Series 2006 A Bonds Reserve Account therein when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2006 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2006 A Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2006 A Bonds Sinking Fund and the Series 2006 A Bonds Reserve Account created hereunder, and all required amounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into the Series 2006 A Bonds Sinking Fund and the Series 2006 A Bonds Reserve Account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2006 A Bonds Sinking Fund and the Series 2006 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2006 A Bonds Sinking Fund, including the Series 2006 A Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2006 A Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month), deposit with the Commission the required interest, if any, principal and reserve account payments with respect to the Series 2006 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission, the SRF Administrative Fee as set forth in the Schedule Y attached to the Loan Agreement.

C. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement, and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

D. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority anytime make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

F. The monies in excess of the sum insured by the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03 and the relevant provisions of the Prior Ordinances, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

H. All remittances made by the Issuer to the Commission and the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

I. The Gross Revenues of the System shall only be used for purposes of the System.

J. All Tap Fees shall be deposited by the Issuer, as received, in the Series 2006 A Bonds Construction Trust Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

ARTICLE VI

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2006 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2006 A Bonds, there shall first be deposited in the Notes Payment Fund the amount set forth in the Supplemental Resolution to pay in full the entire outstanding principal of and all accrued interest on the Prior Notes

B. Next, from the proceeds of the Series 2006 A Bonds, there shall first be deposited with the Commission in the Series 2006 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

C. Next, from the proceeds of the Series 2006 A Bonds, there shall be deposited with the Commission in the Series 2006 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2006 A Bonds Reserve Account.

D. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2006 A Bonds, such monies shall be deposited with the Depository Bank in the 2006 A Bonds Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02 hereof, and until expended, are hereby pledged as additional security for the Series 2006 A Bonds.

E. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2006 A Bonds shall be expended as directed by the DEP.

Section 6.02. Disbursements From the Series 2006 A Bonds Construction Trust Fund. On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 2006 A Bonds will be expended and the disbursement procedures of such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2006 A Bonds Construction Trust Fund shall be made only after submission to, and approved from, the Authority and the DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement, in compliance with the construction schedule; and

(2) a certificate, signed by an Authorized Officer 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 disbursement 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, monies in the Series 2006 A Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2006 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2006 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2006 A Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2006 A Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Series 2006 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2006 A Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Prior Bonds. The payment of the debt service of the Series 2006 A Bonds shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on the Prior Bonds and the Series 2006 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved and described in the sewer rate ordinance of the Issuer enacted October 19, 2006, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2006 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take

all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2006 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances. Additionally, so long as the Series 2006 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the DEP, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2006 A Bonds, immediately be remitted to the Commission for deposit in the Series 2006 A Bonds Sinking Fund, and, with the written permission of the Authority or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2006 A Bonds. Any balance remaining after the payment of the Bonds and the interest, if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $10,000, the Issuer shall, by resolution duly adopted, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $10,000 but not in excess of $50,000, the Issuer shall first, in writing determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding in accordance with the laws of the State. The proceeds of any such sale shall be remitted by

the Issuer to the Commission for deposit in the Sinking Funds for prepayment of the Bonds. The payment of such proceeds into the Renewal and Replacement Fund and the Sinking Funds shall not reduce the amounts required to be paid into such funds by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of $50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2006 A Bonds and the Prior Bonds. All obligations issued by the Issuer after the issuance of the Series 2006 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2006 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2006 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2006 A Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. Additionally, no Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2006 A Bonds pursuant to this Bond Legislation,

without the prior written consent of the Authority and the DEP under the conditions and in the manner herein provided (unless less restrictive than the provisions of the Prior Ordinances).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2006 A Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of design, acquisition or construction of additions, extensions, betterments or improvements to the System or refunding any outstanding Bonds, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

(1) The Bonds then Outstanding;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates adopted by the Issuer and approved by the Public Service Commission of West Virginia, the period for appeal of which has expired prior to the date of issuance of such additional parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of an Independent Certified Public Accountant, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate construction or acquisition of such extensions or improvements, if any, to the System that are to be financed by such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System and their source of and security for payment from said Net Revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior lien of the Series 2006 A Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2006 A Bonds.

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of the Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

Any certifications requiring computations establishing that debt service coverage is sufficient to support the issuance of parity Additional Bonds or that requisite debt service savings are available to support the issuance of refunding bonds shall, in all cases, be evidenced by a certificate of an Independent Certified Public Accountant.

No additional bonds, notes, certificates, contracts or any other obligations shall be issued by the City unless no Event of Default shall have occurred and be continuing with respect to the Bonds.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP

or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the DEP or their agents and representatives, to inspect all records pertaining to the operation and maintenance the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Governing Body. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Authority and the DEP, or any other original purchaser of the Series 2006 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2006 A Bonds, requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, to the extent legally required, and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2006 A Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 2006 A Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in EXHIBIT E of the Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall provide the Authority and the DEP, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2006 A Bonds, equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with

other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2006 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2006 A Bonds, including the Prior Bonds; provided that, in the event the amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2006 A Bonds Reserve Account and any Reserve Accounts for obligations on a parity with or junior to the Series 2006 A Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2006 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2006 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04 hereof.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the DEP and the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance within 30 days of adoption to the Authority and the DEP and to any Holder of the Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the DEP, the Authority and to any Holder of any Bonds, or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the DEP and the Authority by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the DEP covering the supervision and inspection of the development and construction of the Project and bearing 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 and the DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all state and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the Loan Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted

or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the water facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water 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 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2006 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the

System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than $500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall 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 Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP and the Issuer shall verify such insurance prior to commencement of construction. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion and Operation of Project; Permits and Orders. The Issuer shall complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer 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 has obtained all approvals for the issuance of the Series 2006 A Bonds required by State law, with all appeal periods having expired without successful appeal.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer shall provide the DEP with copies of all documents submitted to the Authority.

The Issuer shall also comply with all applicable laws, rules and regulations issued by the Authority, DEP or other State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2006 A Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2006 A Bonds during the term thereof is, under the terms of the Series 2006 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2006 A Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2006 A Bonds during the term thereof is, under the terms of the Series 2006 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or

to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2006 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2006 A Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% or $5,000,000 of the Net Proceeds of the Series 2006 A Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2006 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2006 A Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 2006 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.20. Securities Laws Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2006 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any

proceeds of the Series 2006 A Bonds held in "contingency" as set forth in the Schedule attached to the Certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP before expending any proceeds of the Series 2006 A Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the DEP and the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

Section 7.22. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2006 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2006 A Bonds, and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

ARTICLE VIII

INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own 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 Issuer, at least once each year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2006 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 2006 A Bonds from gross income for federal income tax purposes.

Section 8.02. Arbitrage and Tax Exemption. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2006 A Bonds which would cause the Series 2006 A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2006 A Bonds) so that the interest on the Series 2006 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2006 A Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2006 A Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer covenants to calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Authority, the Issuer shall deposit, or cause to be deposited, in 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 and shall be used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Authority in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer. The Issuer may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 8.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 8.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay the required rebate amount, any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary, in order to

maintain the exclusion of interest on the Series 2006 A Bonds from gross income for federal income tax purposes.

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer 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 Issuer qualifies for the small governmental issue exception to rebate, or any other exception thereto, then the Issuer shall submit to the Authority a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 2006 A Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority including information with respect to earnings on all funds constituting "gross proceeds" of the Series 2006 A Bonds (as such term "gross proceeds" is defined in the Code).

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2006 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2006 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2006 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2006 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or

(3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2006 A Bonds shall be on a parity with the Prior Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, 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 such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might exercise.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the

protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2006 A Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2006 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2006 A Bonds from gross income for federal income tax purposes.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2006 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2006 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2006 A Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2006 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2006 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest, if any, on the Series 2006 A Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2006 A Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2006 A Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed. Except for the Prior Ordinances, all ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed; provided

that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are Outstanding.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Appointment. The Issuer does hereby appoint, designate and approve the hiring of Steptoe & Johnson, Clarksburg, West Virginia, as bond counsel to the Issuer in connection with the issuance by the Issuer of the Series 2006 A Bonds.

Section 11.08. Effective Date. This Ordinance shall take effect immediately following the public hearing and final reading hereof.

Section 11.09. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in *The Elkins News*, a newspaper published and of general circulation in The City of Elkins, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2006 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading: - November 2, 2006

Passed on Second Reading: - November 16, 2006

Passed on Final Reading Following Public Hearing: - December 7, 2006

Judith A. Kruger
Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of The City of Elkins on the 7th day of December, 2006.

Dated: December 12, 2006.

[SEAL]

Recorder

10.06.06
255620.00008

EXHIBIT A

Loan Agreement included in bond transcript as Document 3.

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 2006 A
(West Virginia SRF Program)

SUPPLEMENTAL RESOLUTION NO. 076

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2006 A (WEST VIRGINIA SRF PROGRAM), OF THE CITY OF ELKINS; APPROVING AND RATIFYING THE BOND PURCHASE AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; GRANTING AUTHORITY TO SANITARY BOARD TO APPROVE REMAINING DRAWS; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of The City of Elkins (the "Issuer") has duly and officially adopted and enacted a bond ordinance, effective December 7, 2006 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2001, AND ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF ELKINS AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $8,588,400 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2006 A (WEST VIRGINIA SRF PROGRAM); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS

RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds, Series 2006 A (West Virginia SRF Program), of the Issuer (the "Bonds" or the "Series 2006 A Bonds"), in an aggregate principal amount not to exceed $8,588,400, and has authorized the execution and delivery of the bond purchase agreement relating to the Series 2006 A Bonds, including all schedules and exhibits attached thereto, by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") (the "Loan Agreement"), all in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and ratified by the Issuer, that the exact principal amount, the date, the maturity date, the redemption provision, the interest rate, the interest and principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ELKINS:

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 2006 A (West Virginia SRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of $8,588,400. The

Series 2006 A Bonds shall be dated the date of delivery thereof, shall finally mature September 1, 2028, and shall bear interest at the rate of 2% per annum. The principal of and interest on the Series 2006 A Bonds shall be payable quarterly, on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2008, and maturing September 1, 2028, and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 2006 A Bonds. The Series 2006 A 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 Series 2006 A Bonds. The Issuer does hereby approve and shall pay the SRF Administrative Fee equal to 1% of the principal amount of the Series 2006 A Bonds set forth in the "Schedule Y" attached to the Loan Agreement.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 3. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the DEP and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer does hereby appoint and designate The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and does approve and accept 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, approved and directed.

Section 5. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 6. The Issuer does hereby appoint and designate Davis Trust Company, Elkins, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 7. Series 2006 A Bonds proceeds shall be paid $98,644.93 to pay in full the entire outstanding principal of and all interest accrued on the Prior Notes on the Closing Date.

Section 8. Series 2006 A Bonds proceeds in the amount of $-0- shall be deposited in the Series 2006 A Bonds Sinking Fund, as capitalized interest.

Section 9. Series 2006 A Bonds proceeds in the amount of $522,074.76 shall be deposited in the Series 2006 A Bonds Reserve Account.

Section 10. The balance of the proceeds of the Series 2006 A Bonds shall be deposited in or credited to the Series 2006 A Bond Construction Trust Fund as received from the DEP from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 11. The Mayor and the City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about December 12, 2006, to the Authority pursuant to the Loan Agreement.

Section 12. The refunding of the Prior Notes, and the acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 13. The Issuer does hereby approve and authorize all contracts relating to the financing, acquisition and construction of the Project.

Section 14. The Issuer hereby determines to invest all monies in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Monies in the Series 2006 A Bonds Sinking Fund and the Series 2006 A Bonds Reserve Account shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 15. The Issuer hereby appoints and designates the Sanitary Board, and the Authorized Officers thereof, as its agent (i) for the review and approval of all invoices for the Project to be paid from the proceeds of the Series 2006 A Bonds; (ii) for the approval of all remaining draws of the proceeds of the Series 2006 A Bonds; (iii) to take any and all actions necessary to apply for and obtain a commitment from the DEP, specifically including, but not limited to, any administrative loan documents required by DEP; and (iv) to act on and execute documents on behalf of the Issuer for any and all federal and state actions as they relate to the planning, design and/or construction of the Project.

Section 16. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 7th day of December, 2006.

CITY OF ELKINS

By: Judith A. Heyza
Its: Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the City of Elkins on the 7th day of December, 2006.

Dated: December 7, 2006.

[SEAL]

City Clerk

11.30.06
255620.00008

WEST VIRGINIA
Water Development Authority
Celebrating 34 Years of Service ***1974 - 2008***

May 16, 2008

THE CITY OF ELKINS

Sewer Revenue Bonds, Series 2008 A

TO WHOM IT MAY CONCERN:

In reliance upon the certificate of the certified public accountant, Tetrick & Barlett, PLLC, and the opinion of bond counsel, Steptoe & Johnson PLLC, that The City of Elkins (the "Issuer") has met the coverage and parity requirements for issuance of parity bonds, the undersigned duly authorized representative for the West Virginia Water Development Authority, the registered owner of the entire outstanding aggregate principal amount of the Series 1986 B Bonds; Series 1996 A Bonds and Series 2006 A Bonds, hereinafter defined and described, hereby consents to the issuance of the Sewer Revenue Bonds, Series 2008 A (the "Series 2008 A Bonds"), in the original aggregate principal amount of $600,000 (the "Bonds"), by the Issuer, under the terms of the ordinance authorizing the Bonds, on a parity, with respect to liens, pledge and source of and security for payment, with the Issuer's: (i) Supplemental Subordinate Sewer Revenue Bonds, Series 1986 B (the "Series 1986 B Bonds"), dated April 28, 1986, issued in the original aggregate principal amount of $517,001; (ii) Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated August 22, 1996, issued in the original aggregate principal amount of $300,000 (the "Series 1996 A Bonds"); and (iii) Sewer Revenue Bonds, Series 2006 A (West Virginia SRF Program), dated December 7, 2006, issued in the original aggregate principal amount of $8,588,400.

Chris E. Jarrett – Executive Director

180 Association Drive, Charleston, WV 25311-1217
phone (304) 558-3612 / fax (304) 558-0299
www.wvwda.org

MEMORANDUM

To: **Financing Team**

From: **John C. Stump, Esquire**

Date: **May 16, 2008**

Re: **The City of Elkins Sewer Revenue Bonds, Series 2008 A (The Huntington National Bank)**

---

1. **DISBURSEMENTS TO THE CITY OF ELKINS**

Payor:	The Huntington National Bank
Amount:	$8,000
Form:	Check
Payee:	The City of Elkins
Account:	Series 2008 A Bonds Construction Trust Fund

RESOLUTION OF THE CITY OF ELKINS
APPROVING INVOICES RELATING TO THE PROPOSED LIFT STATION #11 SEWER PROJECT AND AUTHORIZING PAYMENT THEREOF,

WHEREAS, The City of Elkins, has reviewed the invoices attached hereto and incorporated herein by reference relation to the construction of the Project funded by the Huntington National Bank and find as follows:

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 paid 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.

d) That the payment for each of the items proposed is due and owing.

e)

NOW, THEREFOR, BE IT RESOLVED The City of Elkins by as follows: There is hereby authorized and directed the payment of the attached invoices as follows:

Vendor	Huntington National Bank
Steptoe & Johnson	7,500.00
Huntington Bank	500.00
Total	8,000.00

ADOPTED BY The City of Elkins, at the meeting held on the 15th day of May, 2008.

By: Judith A. Kruse

Its: Mayor

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information
(304) 353-8196
(304) 353-8181 Fax
John.Stump@steptoe-johnson.com

May 28, 2008

The City of Elkins
Sewer Revenue Bonds, Series 2008 A

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Internal Revenue Service
Internal Revenue Service Center
Ogden, Utah 84201

Ladies and Gentlemen:

Enclosed herewith is a completed and executed Internal Revenue Service Form 8038-G and a file copy thereof with regard to the above-captioned issue. Please file the original form in the appropriate Internal Revenue Service records and return the copy marked in red as the "File Copy" to me (after acknowledging receipt of the same) in the enclosed self-addressed envelope.

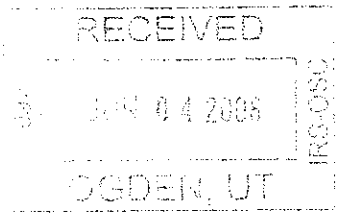
Thank you for your attention to this letter. If you have any questions regarding any of the issues set forth herein, or if I can be of any service, please do not hesitate to call.

My best regards.

Very truly yours,

John C. Stump

JCS/bsl
Enclosure



255620.00016

CH4914702.1

Form **8038-G**
(Rev. November 2000)
Department of the Treasury
Internal Revenue Service

Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)
▶ See separate Instructions.
Caution: *If the issue price is under $100,000, use Form 8038-GC.*

OMB No. 1545-0720

If **Amended Return**, check here ▶ ☐

Part I Reporting Authority

1	Issuer's name **The City of Elkins**	2 Issuer's employer identification number **55 : 6000170**
3	Number and street (or P.O. box if mail is not delivered to street address) **401 Davis Avenue**	Room/suite 4 Report number **3 2008-1**
5	City, town, or post office, state, and ZIP code **Elkins, West Virginia 26241**	6 Date of issue **May 16 , 2008**
7	Name of issue **Sewer Revenue Bonds, Series 2008 A**	8 CUSIP number **N/A**
9	Name and title of officer or legal representative whom the IRS may call for more information **Philip J. Graziani, Jr., Clerk**	10 Telephone number of officer or legal representative **(304) 636-1414**

Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule

11	☐ Education	11	
12	☐ Health and hospital	12	
13	☐ Transportation	13	
14	☐ Public safety	14	
15	☑ Environment (including sewage bonds)	15	600,000
16	☐ Housing	16	
17	☐ Utilities	17	
18	☐ Other. Describe ▶	18	
19	If obligations are TANs or RANs, check box ▶ ☐ If obligations are BANs, check box ▶ ☐		
20	If obligations are in the form of a lease or installment sale, check box ▶ ☐		

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	May 5, 2019	$ 600,000	$	6.48 years	5.25 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22	Proceeds used for accrued interest			22	-0-
23	Issue price of entire issue (enter amount from line 21, column (b))			23	600,000
24	Proceeds used for bond issuance costs (including underwriters' discount)	24	8,000		
25	Proceeds used for credit enhancement	25	-0-		
26	Proceeds allocated to reasonably required reserve or replacement fund	26	-0-		
27	Proceeds used to currently refund prior issues	27	-0-		
28	Proceeds used to advance refund prior issues	28	8,000		
29	Total (add lines 24 through 28)			29	8,000
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)			30	592,000

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)

31	Enter the remaining weighted average maturity of the bonds to be currently refunded ▶	N/A years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded ▶	N/A years
33	Enter the last date on which the refunded bonds will be called ▶	N/A
34	Enter the date(s) the refunded bonds were issued ▶	

Part VI Miscellaneous

35	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	-0-
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a	-0-
b	Enter the final maturity date of the guaranteed investment contract ▶		
37	Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a	-0-

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the name of the issuer ▶ _____ and the date of the issue ▶ _____

38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶ ☑

39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ ☐

40 If the issuer has identified a hedge, check box ▶ ☐

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Sign Here

Judy Guye — Signature of issuer's authorized representative
May 16, 2008 — Date
Judy Guye, Mayor — Type or print name and title

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 17th day of April, 2008.

CASE NO. 06-0079-S-CN (REOPENED)

CITY OF ELKINS
Application for a certificate of convenience and necessity to construct improvements to its existing wastewater treatment plant and for approval of financing associated therewith.

COMMISSION ORDER

This order reopens the City's certificate case to approve construction and financing for a new lift station.

BACKGROUND

On January 26, 2006, the City of Elkins (City), applied for a certificate of convenience and necessity to construct improvements to its wastewater treatment plant (WWTP) and for approval of financing required to fund the proposed project. The upgrades will increase the WWTP's capacity from 2,490,000 gallons per day to 4,990,000 gallons per day, which will reduce the City's combined sewer overflows. The City initially estimated a project cost of $7,018,000, financed through a State Revolving Fund (SRF) loan at an interest rate of 2% and an administrative fee of 1% for twenty (20) years.

Commission Staff (Staff) recommended that the Commission approve the project and proposed financing. See, May 31, 2006 Staff memorandum. The Administrative Law Judges Division (ALJ) issued a Recommended Decision on August 24, 2006 (Final Order, September 13, 2006) granting the City a certificate for the sewer project and approving the proposed funding.

The City subsequently petitioned to reopen this matter, citing an increased project cost from the initial estimate of $7,018,000 to $8,588,400. See, October 11, 2006 Petition to Reopen Certificate Case. The City provided documentation from the Department of Environmental Protection of its commitment of an increase the SRF loan, under the previously approved terms and conditions, by an additional $1,570,400, for a revised total of $8,588,400. Staff recommended that the Commission reopen the case and approve the increased project funding. See, December 12, 2006 Staff memorandum. The Commission approved the additional funding requested by the District. See, December 12, 2006 Commission Order. The order also specified that the City must seek approval of changes in the project's plans, scope or the terms of any financing or loans which affect rates. Id.

The City again petitioned to reopen the certificate case, requesting approval for construction of a new lift station along with additional financing. See, March 20, 2008 Petition to Reopen Certificate Case. The City stated that during construction of previously approved upgrades, it learned that a lift station must be replaced in order to increase capacity near the Tygart Valley Mall and address combined sewer overflows. The City proposes to finance replacement of the lift station with a $600,000 bank loan from Huntington Bank at a rate of 5.25% over a ten year term along with a contribution of $31,200 from existing funds obtained for the project. The loan will be interest-only over the first year. The City does not anticipate any need for a rate increase and expects to refinance the principal as part of a future project. Id. The City requested expedited treatment of its Petition to prevent loss of a favorable bid on the project.

Staff filed an Initial and Final Joint Staff Memorandum recommending approval for both construction and financing of the City's proposed lift station. See, April 9, 2008 Staff memorandum. Staff agrees that the City will not require a rate increase to pay for the additional financing.

DISCUSSION

This matter originally arose from the City's need to address the capacity of its WWTP in order to reduce combined sewer overflows. The current proposal will advance that goal without imposing increased costs on ratepayers. The proposal will also provide capacity to handle anticipated growth near the Tygart Valley Mall. Thus, the Commission finds that it should reopen this case and approve both the construction and financing of the proposed lift station.

FINDINGS OF FACT

1. The Commission granted a certificate and approved financing for the City's construction of certain upgrades and improvements to its existing sewage treatment facility. See, Recommended Decision issued August 24, 2006; final September 13, 2006.

2. The City petitioned the Commission to reopen this proceeding to approve construction and financing of a lift station. See, March 20, 2008 Petition to Reopen Certificate Case.

3. Staff recommended that the Commission grant the petition and approve both construction and financing of the new lift station as set forth in the City's Petition. See, April 9, 2008 Staff memorandum.

4. Construction of the proposed lift station will not require increased rates. Id.

CONCLUSION OF LAW

It is reasonable to reopen this matter and approve the construction and financing of an additional lift station which will advance the goals of the underlying proceeding without placing an additional burden on ratepayers.

ORDER

IT IS THEREFORE ORDERED that this case is reopened.

IT IS FURTHER ORDERED that construction of a lift station as described in the March 20, 2008 Petition is hereby approved.

IT IS FURTHER ORDERED that the loan funding from Huntington National Bank in the amount of $600,000 for a term of ten (10) years with an annual interest rate of 5.25%, and interest-only monthly payments during the first year of the term is hereby approved.

IT IS FURTHER ORDERED that if there are further changes in the project's plans, scope, financing or project costs, resulting in a modification of rates, the City must seek the Commission's approval of those changes.

IT IS FURTHER ORDERED that if there is a change in the project cost that does not affect rates, the City need not petition to reopen this case for further Commission approval. Instead, the City must file an affidavit from its certified public accountant verifying that rates are not affected.

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

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

A True Copy, Teste: Sandra Squire

Sandra Squire
Executive Secretary

MJM/lcw
060079cb.wpd